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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

WIRT K. WINTON,
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others,
Appellants,
vs.
JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS.

No. 6 ~~15~~

APPELLANTS' MOTION TO REMAND FOR ADDITIONAL FINDINGS

WILLIAM W. SCOTT,
Attorney for Appellants.

TABLE OF CONTENTS

TABLE OF CASES CITED

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No. 123

APPELLANTS' MOTION TO REMAND FOR ADDITIONAL FINDINGS.

Comes now the appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, by their counsel, William W. Scott, and moves the Court to remand this case to the Court of Claims for additional findings, to wit:

Findings of fact on the certain questions of fact set out in the motion made by the claimants below (appellants here) for findings of fact on certain questions of fact as appears in the record commencing with sub-head "IX" on page 213 and ending with the questions (A, B, C, D, E,

F) of fact following sub-head "XXXII" on page 231 of the Record.

And a finding of fact on the question of whether or not the motion made by claimants (appellants here) in the Court below on August 9, 1915, to amend the Court's findings of fact of May 17, 1915, contained requested amendments to findings Nos. 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 33 and 43 the same as set out in the appendix annexed hereto. Said amendments or requested findings of fact are set out in full in the appendix filed herewith, as a part hereof.

And also a finding of fact on the question whether or not the claimants (appellants here) on February 6, 1917, moved the Court of Claims to authorize and direct the certification, as a part of the transcript, the findings of fact made by the Court below on May 17, 1915, and claimants' motion made on August 9, 1915, to amend said findings of fact, and if so, the action taken thereon by the Court below.

And also to findings of fact on the questions of fact as to whether or not Winton and associates prepared memorials and presented them to Congress in behalf of the Mississippi Choctaws other than the two memorials set out in the appendix of the opinion of the Court of Claims, R. 155-159, which were presented to and made a part of the record of the case in the Court below, at or before trial of said case, and if so are they the memorials set out in the appendix filed herewith and described as follows:

Memorial petition on behalf of the Mississippi Choctaws, September 1, 1897, signed by C. F. Winton, Counsel.

Petition of the Mississippi Choctaws, presented to Congress February 13, 1900, and being H. R. Document No. 426, 56th Congress, first session.

Memorial of the full-blood Mississippi Choctaws, rela-

tive to their rights in the Choctaw Nation, presented to Congress April 24, 1902, and being Senate Document No. 319, 57th Congress, first session.

Memorial of Mississippi Choctaw Indians, presented to Congress March 15, 1904, and being H. R. Document No. 614, 58th Congress, second session.

See appendix filed herewith.

Dated this 21st day of October, A. D. 1918.

WILLIAM W. SCOTT,
Attorney for Appellants.

AFFIDAVIT.

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA } To wit:

Personally appeared before the undersigned William W. Scott, who having been first duly sworn on his oath says:

That his name is William W. Scott and that he is the attorney of record for the appellants in the case, Wirt K. Winton, administrator, *vs.* Jack Amos and others, now pending in the Supreme Court of the United States and being No. 123 on the docket for the October term, 1918, and that he was the attorney of record for said appellants, the original claimants, in the Court below.

That the said Court below made and entered findings of fact on December 7, 1914, and on May 17, 1915, and that on August 9, 1915, the said appellants, claimants below, moved the Court to amend the findings made on May 17, 1915, in numerous instances, particularly findings 9, 11, 15, 17, 19, 24, 29, 30, 31 and 33. That the questions of fact covered by said amendments were the same questions of fact set out in the claimants' "request for findings of fact on certain questions of fact," R. 213-231, made and filed in the Court of Claims on January 8, 1917.

Affiant further states that the said motion made by the claimants on August 9, 1915, to amend said findings of fact entered on May 17, 1915, in certain instances requested the Court to amend said findings by making them conform to certain findings of fact made by the Court on December 7, 1914, to which the attorney for the defendants had *made no objections* as provided for in the *per curiam* opinion attached to said findings of December 7, 1914. Some of the questions of fact set out in the claimants "request for findings of fact on certain questions of fact," covered the same subject matter or questions of fact found by the Court on December 7, 1914, and not objected to by the defendants as before stated, but omitted from or not contained in the findings of fact made by the Court on May 17, 1915.

Affiant further states that on or about February 6, 1917, after action was taken by the Court below on claimants' motion for new trial and claimants' said "request for findings of fact on certain questions of fact," as shown by the Court's opinion of January 29, 1917, R. 201, the claimants moved the Court to authorize and direct the certification as a part of the transcript, the said findings of fact made by the Court on December 7, 1914, and on May 17, 1915, and the claimants' motion made August 9, 1915, to amend said findings of fact, and that said motion was overruled.

Affiant further states that he is a member of the Bar of the Supreme Court of the United States and in good standing, and that he believes that that part of the record of this case in the Court below set forth in the motion to remand to which this affidavit is attached should be made a part of the record in this Court in order that all the ques-

tions involved may be fully and fairly presented to the Court.

Further this affiant saith not.

WILLIAM W. SCOTT.

Subscribed and sworn to before the undersigned a Notary Public in and for the District of Columbia this 21st day of October, A. D. 1918.

W. CLARENCE DUVALL,
Notary Public.

BRIEF IN SUPPORT OF MOTION TO REMAND.

The appellants desire that the claimants' motion, made August 9, 1915, to amend the findings of fact made May 17, 1915, be made a part of the record in this Court in order to establish the fact that the questions of fact presented by claimants' "request for findings of fact on certain questions of fact" covered the same questions of fact set out by claimants' said motion to amend and to show that the Court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as it did in the opinion of January 29, 1917, R. 206.

The findings of fact requested by claimants in their motion to amend made on August 9, 1915, are set out in full in an appendix attached hereto and the Court's attention is respectfully invited thereto. The requests for findings of fact made by the claimants in their "request for findings of fact on certain questions of fact" are fully set out in the record. R. 213-231. By examining the subject matter of facts set out in claimants' said motion of August 9, 1915, it clearly appears that they cover the same subject matter or questions of fact as does the claimants'

"request for findings of fact on certain questions of fact" made January 8, 1917.

The situation in the Court below which made it necessary to present to that Court a "request for findings of fact on certain questions of fact" in short was as follows:

It is the practice in the Court of Claims to consider and treat a motion for new trial and a motion to amend findings of fact as a new trial, and that practice was followed in this case. The Court below prior to the last trial of the case was requested to make certain findings, that is, was requested to make findings on certain questions of fact and failed to act on said request.

The Court in its findings of December 7, 1914, found certain facts and attached thereto an order as follows:

"Forty-five (45) days from this date will be allowed to interested parties to file objections and findings and briefs. Thirty (30) days will then be allowed the defendants and all other parties interested to reply thereto, and the case is set for a hearing Tuesday, February 23, 1915." R. 202.

The defendants filed objections to certain findings and parts of findings made by the Court, and made no objection to certain parts of the findings, indicating that those parts of the Court's findings were acceptable and established by the evidence. The claimants likewise made no objection to some of the same parts of the findings. The findings of fact handed down by the Court after the next trial of the case omitted those very parts of the findings to which the claimants, as well as the defendants had made no objection. The claimants' said motion to amend the findings made on August 9, 1915, in part requested the Court to conform the findings made on May 17, 1915, so as to set forth the facts of the Court's previous findings which had not been objected to by either party. For an instance of this kind the Court's attention is invited to that part of the

claimants' motion to amend which referred to finding 11, as set out in the appendix page ——.

It was the "request for findings of fact on certain questions of fact" which drew forth the opinion of January 29, 1917. The Court below had, prior to the trial of the case, been requested to make findings of fact on the same subject matter covered by the claimants' said request (R. 213 to 231) *and failed to make findings of fact thereon and failed to rule on the competency or materiality of the facts so requested.* The purpose, therefore, of the "request for findings of fact on certain questions of facts" was to obtain from the Court a ruling on the competency or materiality of the facts theretofore and therein requested. The ruling was obtained and made by the Court in its opinion under date of January 29, 1917. R. 201 to 232.

The Court below styles the "request for findings of fact on certain questions of fact" as an extraordinary proceeding. The situation in the Court below was extraordinary and therefore called for prayers for extraordinary relief.

On August 14, 1915, exceptions to the Court's findings of fact and bills of exceptions were filed in behalf of one of the claimants in the Court below, and on August 15, 1915, similar relief was requested in behalf of another claimant. Again on August 16, 1915, exceptions to findings of fact and bill of exceptions were filed on behalf of another claimant. The Court, however, consistently refused the claimants' bills of exceptions or failed to act thereon. R. 94.

On November 15, 1915, the defendant filed a brief opposing granting the claimants' bills of exceptions, and on December 6, 1915, the Court fixed February 1st as time when all motions in the case would be heard. The motions for bills of exceptions were heard and the Court failed to allow any claimant a bill of exceptions or to act thereon. This being the status of the proceeding on January 8, 1917,

these appellants as claimants below presented to the Court in the nature of a bill of exception a "request for findings of fact on certain questions of fact." The Court acted thereon as shown in the opinion of January 29, 1917. R. 201. No action was taken on the exceptions to the Court's findings of fact and bills of exception theretofore filed by the various claimants.

It is, of course, here contended that the Court below was in error when it stated that "it is likewise obvious that from the express allegation of the motion (referring to claimants' request for finding of fact on certain questions of fact") that the requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear." R. 206.

The claimants' motion made on August 9, 1915, to amend the findings of fact which is set out in the appendix, will show that the Court below is in error in making the above statement. The claimants' said motion made on January 8, 1917, contains citations to the record in the Court below where requests covering the same questions of fact had theretofore been made by the claimants. The Court having failed to make findings on the questions of fact in the request presented to it by these appellants, and having failed to act on the exceptions to the findings of fact and bills of exceptions filed in behalf of other claimants, these claimants on January 8, 1917, took the only other course left to protect their rights and presented to the Court their "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions. Said request is a part of the record, R. 213 to 231, and sets out the facts fully enough for this Court to pass on the question as to whether or not they are material and competent, that is, is it material and competent to show what kind of services and the value thereof the appellants rendered the defendants. The

Court below undoubtedly is the judge of the facts in the case but it is respectfully submitted that there should be and must be some way open to a claimant in that Court to protect his rights and interest when the Court fails to make findings on questions of fact presented to it. Bills of exceptions having been denied in this proceeding it was necessary for their claimants to seek another procedure and this they did by putting the same questions of fact, which had prior thereto been presented to the Court, squarely before the Court for findings thereon or a ruling as to their competency and materiality. This the motion or request of January 8, 1917, did, and it is here contended that said request should be considered and treated by this Court in the nature of and as a bill of exceptions.

The rules of practice in the Court of Claims is not full on the question of procedure when the Court fails to make findings on questions of fact presented to it. It is, however, submitted that the decisions of this Court on questions of such procedure is full enough to warrant the statement that either course attempted to be taken by the claimants in the Court below is within the rules and within the rights of a claimant in that Court. Either course would present fully and fairly the question of the competency or materiality of a fact to the question involved and it is submitted that this Court and not the Court below is the final authority to pass upon the materiality or competency of a fact.

If a claimant in the Court of Claims is not entitled to exceptions to the findings made by the Court and is not entitled to present to that Court a "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions after that Court had failed to make findings of fact on questions previously presented to it and after that Court failed to act on exceptions to its findings and

bill of exceptions in order that the materiality of a fact or the competency of a fact might be presented to this Court, the decision of the Court of Claims would be final and there would be no other way open for him to have this Court review rulings of the Court of Claims on such questions.

In United States vs. Adams, 9 Wall., 661, this Court said:

> "If that Court (Court of Claims) should refuse, with proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to request that such findings be made, and to except in case of refusal."

The course outlined by this Court in the Adams case as above stated is the course followed by the claimants in the Court below. The Court had failed to make findings on questions of fact presented to it as set out in the motion to amend made on August 9, 1915, the claimants following the procedure outlined as above and presented to the Court on January 8, 1917, their "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions. This course was taken instead of filing exceptions to the findings of fact and the bill of exceptions for the reason that the Court below had failed to act on the exceptions and bill of exceptions filed in behalf of other claimants as hereinbefore stated.

> "The fifth (rule as to appeals from the Court of Claims) permits either party to call for a finding upon special question deemed material to the judgment in the case, and, if refused, to ask this court to pass upon the materiality of the fact alleged, and should it be considered material, to send down for

the findings. Such is the construction given the rules in *Mahan vs. N. Y., 14 Wall., 112.* The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request as provided in the rule." *Driscoll Case, 131 U. S.*

"If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding." *Mahan vs. U. S., 14 Wall., 109.*

"On an appeal, the parties were entitled to have all the facts proved in the case before the court below, in the judgment of the court truly found, and stated in the record, that either deemed material to the decision; and as we have seen, the remedy is ample to correct any mistakes committed, if applied for prior to the hearing in this court." *U. S. vs. Adams, 8 Wall., 654.*

The same rule applies to Admiralty cases. In Duncan *vs.* the Francis Wright, 105, U. S., 583, this Court held:

"If the Circuit Court neglects or refuses on request to make a finding, one way or the other, on a question of fact material to the determination of the cause, when evidence had been addressed on the subject, an exception to such refusal presented by a bill of exceptions, may be considered here on appeal."

So too, if the court against remonstrance finds a material fact not supported by any evidence.

"In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial, and in the other that there was some evidence to prove what is found when in truth there was none. Both these

are questions of law and proper subjects for review in an appellate court."

Whether or not circumstantial facts

> "establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law. * * *
>
> "The inquiry thus presented is as to the legal effect of facts proved, not of the evidence given to make the proof, and the question of practice to be settled is, whether under our rule the judgment of the Court of Claims, as to the legal effect of what may perhaps, not improperly be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal. * * *
>
> "To avoid misapprehension in the future we take this opportunity to say that we do not only think such a judgment may be reviewed here, if the question is properly presented, but when the rights of the parties depend upon circumstantial facts alone, and there is no doubt as to the legal effect of the facts it is the duty of the court, when requested, to so frame its findings as to put the doubtful question in the record. After that the question is as to the effect of the facts, and when the evidence in a case had performed its part and brought all the facts that have been proved, these facts thus established are to be grouped and their legal effect as a whole determined." *U. S. vs. Puch, 99 U. S., 265.*

The Court below referring to Finding 9, R. 213 and that part of "claimants' request for findings of fact on certain questions of fact" pertaining to said finding, says:

> *"Whether or not* the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said

Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Government, and in which representation the said Winton was to assist and co-operate with the said Owen?"

"Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same and in open court on the oral argument stated 'no objections.'"

The above request is taken by the Court from the "claimants' request for findings of act on certain questions of fact." The paragraph last above following it is the Court's comment thereon and while this within itself is technically correct *the fact nevertheless remains that the claimants did prior to January 8, 1917*, the date of the filing of claimants' "request for findings of fact on certain questions of fact," *move to amend* said Finding 9 by *requesting the Court to insert the same words as those appearing in said request* in language as follows:

FINDING IX.

"*Amend Finding* IX, paragraph 7, line 7, by inserting after the words '*funds*' the following:

"And represent the claims of those people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments and in which representation the said Winton was to assist and co-operate with the said Owen."

This request was made Aug. 9, 1915.

There are other instances showing that the Court below is in error in stating that the "request now made (referring to the requests made January 8, 1917), have not heretofore been requested in either narrative or alternative form and

the reason for this omission does not appear." This is particularly true as to the subjects treated ni the Court's Findings 11, 15, 17, 19, 24, 29, 30, 31 and 33.

REVIEW OF THE QUESTIONS OF FACT WHICH THE COURT BELOW HELD IMMATERIAL IN THE OPINION OF JANUARY 29, 1917.

Referring to the questions of fact presented to the Court under Section "A," sub-head "XI," R. 216, the Court held that the questions there presented were immaterial. The fact is that Mr. Sherman was Chairman of the Committee on Indian Affairs of the House of Representatives at the time the legislation in question was enacted. It was before that committee that Mr. Owen, associate of Winton made argument on the question of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation. As a result of the hearing Mr. Sherman presented certain amendments favorable to the rights of the Mississippi Choctaws as committee amendments. It was therefore very material to the issues involved to show that Mr. Sherman was chairman of that committee at that time.

The questions presented in Sections "B," "C," and "D," under the same sub-head "XI," R. 216-217, were also held by the Court below to be immaterial.

The questions of fact covered by these three questions relate to the *professional work performed* by Mr. Owen in advocating before proper authorities the enactment of legislation in behalf of the Mississippi Choctaws. The Court of Claims made tentative findings on December 7, 1914. The defendants made no objections to certain findings of fact, but when the facts were handed down later on May 17, 1915, findings on those very questions of fact to which no objection had been made were omitted and not set out

in the Court's findings. This made it necessary for the claimants to request the Court to amend their findings by inserting a paragraph in finding "XI." The findings omitted by the Court on which question it later failed to make a finding and held to be immaterial, set out the fact that Mr. Owen submitted statements, documents and a written argument to Mr. Williams, a Member of the House of Representatives, and that "as a result of statements made and documents and arguments submitted by him, said Owen, convinced Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation." It is respectfully submitted that facts showing the preparation of argument, oral and written argument, advocating the rights of the Mississippi Choctaws and presenting that argument, oral and written, as a lawyer would present it and the only way he could professionally present it to Mr. Williams, *in accordance with the latter's request*, is certainly a material fact in this case and shows a part of the professional services rendered by Mr. Owen as attorney for the Mississippi Choctaws and does not come within the class of services which controlled the Court in the Trist case, *supra*.

The Court's attention is invited to the questions of fact presented to the Court under the subhead "XXIII," R. 221, and it is respectfully submitted that if the record in the Court below shows that Senator Walthall made a statement on the floor of the Senate in presenting an amendment providing relief for the Mississippi Choctaws that said amendment was presented at the instance of the representative of the Mississippi Choctaws, it is material to the issues involved in this case that the findings show that fact.

The memorial referred to in section "B," of this request R. 221, that is, the memorial of April 4, 1900, which the Court says is set out in the findings, cannot be found in

the appendix R. 133. The appendix contains only two memorials, the memorials of December, 1896, and January, 1897, R. 155-159. The Court does, however, in finding "XXIII," R. 109, set out one paragraph taken from the Winton memorial of April 4, 1900, and by comparing that paragraph with the paragraph which the same finding says the Indian Appropriation Act of May 31, 1900, contained, the Court will find that Winton did in that memorial originate and advocate that legislation. The Court, however, says that "the record is silent" on this fact, R. 221, section "A" under finding "XXIII," and concluded by saying that if the fact was found it would be immaterial.

Under the sub-head "XXIX," R. 223, the Court was requested to make a finding on the question as to whether or not Winton and associates had prepared memorials advocating the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and whether or not they caused these memorials to be presented to Congress. The Court had already found that Winton and associates had prepared three memorials advocating the rights of the Mississippi Choctaws and set out two of the said memorials in the appendix and referred to a third and fourth in the findings, R. 101, 109. These memorials speak for themselves and it is respectfully submitted undoubtedly establishes the fact which is one of the most important facts in the present case, that Winton and associates rendered *professional services* in behalf of the Mississippi Choctaws and that the class of services which these memorials show that Winton and associates did render are not such services as controlled the Court when the Trist case *supra* was decided.

The second paragraph on page 224 of the record requested the Court to find whether or not "Mr. Owen was recognized by the Congress, members of Congress and other officials of the Government and the Choctaw Nation, as the

attorney for the Mississippi Choctaws in their effort to obtain their rights to citizenship in the Choctaw Nation then made before Congress and its committees."

The Court held the facts covered by the above request immaterial.

The allegation of the petition is that Winton, Owen and associates were the attorneys for the Mississippi Choctaws and it is respectfully submitted that it is material and competent to the issues involved for the Court to find whether or not Winton and associates were the recognized attorneys for the Mississippi Choctaws.

The question of fact presented to the Court as set out on page 228 of the record in section "A" of finding "XXXI," as to whether or not the services rendered from 1898 to 1906, inclusive, by Winton and associates in behalf of the Mississippi Choctaws has been paid for, the Court held to be immaterial. The Court did not hold nor find that Winton and associates rendered no services to the Mississippi Choctaws during this period, but simply held the fact presented by their request to be immaterial, which it is contended here is in error.

Without taking up each question of fact presented to the Court by claimants' "request for findings of fact on certain questions of fact" it is submitted that this Court can from the statement of facts therein set out rule on the question of their competency or their materiality to the questions involved. If this Court should hold that these questions or any of them are material then the case should be remanded to the Court below with instructions to make findings thereon.

It is not sufficient for the Court below to simply hold or conclude from the evidence that the petition should be dismissed. The findings of fact made by the Court below should show the work, the character of the work and the

extent thereof and its value to the Mississippi Choctaws and then rule on the competency or materiality of such facts and as to whether or not the petition should be dismissed thereon. A conclusive or ultimate fact alone is not sufficient. The primary facts showing the work, the character and value thereof should be set out in the findings in order that this Court may pass upon whether or not the work performed comes within the ruling laid down by this Court in Trist case *supra*. The question as to what the findings of fact should show was before this Court in the case of *Shaw vs. U. S., 93, U. S., 235*, wherein it was said:

> "A finding in the nature of special verdict which states simply that a vessel 'was impressed into the military service of the United States by A. B., quartermaster,' is defective in not setting forth the circumstances which would enable the Supreme Court to determine whether the vessel was obtained by impressment or contract."

A recent case in which the Court of Claims failed to make full findings on questions of fact presented by the record is that of *Ripley vs. U. S., 220, U. S., 491; id. 222, U. S., 144*, to which the Court's attention is respectfully invited.

In findings "XX" and "XXVII" the Court states that the work of Commissioner McKennon in identifying the Indians, was interfered with and retarded by Winton, R. 107-108 and 111. In another branch of this case in finding "XLIII," R. 130-132, the Court finds that Sullivan and Neill had been employed by Winton while he was in the South and while Commissioner McKennon was there, to bring Mississippi Choctaws before Mr. McKennon for identification and states further that Sullivan and Neill *"also co-operated with said Winton in bringing said Indians and their witnesses before Commissioner McKennon for identification*

and enrollment at the hearing conducted by him in Mississippi in 1899," R. 130.

In this same finding "XLIII," section "V," R. 131-132, the Court states that "during the month of March, 1903, said Sullivan and Neill in further pursuance of their said employment (with Winton and associates) moved twenty-two Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen."

The facts found by the Court in finding "XLIII" as above referred to are *inconsistent* with the facts found by the Court in findings "XX" and "XXVII." In finding "XLIII" the Court very clearly finds that Sullivan and Neill, employees of Winton and associates, co-operated with "and assisted said Winton in bringing said Indians and their witnesses before Commissioner McKennon for their identification and enrollment at the hearing conducted by him in Mississippi in 1899." R. 130. In findings "XX" and "XXVII," however, the Court finds the contrary and finds that Winton did not assist in that work but retarded it.

In *Lawrence's case, 8th C. Cls., 252,* the Court of Claims held that

> "As to facts prayed for by the parties not allowed by the Court, they will be certified up with the reasons of the Court for its refusal."

On February 6, 1917, after action was taken by the Court below on claimants' motion for new trial and on claimants' said *"request for findings of fact on certain questions of fact"* as shown by the court's opinion entered January 29, 1917, which opinion forms part of the transcript, the appellants, as claimants in the court below, moved the Court to direct and authorize the certification as part of the transcript the said findings of fact made December 7, 1914 and

May 17, 1915, and claimants' motion of August 9, 1915, on certain parts thereof, to amend said findings which motion was overruled by the Court.

It is therefore respectfully submitted that this motion should prevail and the case remanded to the Court below for additional findings.

WILLIAM W. SCOTT,
Attorney for Appellants.

(See appendix hereto annexed).

I hereby acknowledge the receipt of a copy of the above motion, affidavit, brief and appendix this..... day of October, A. D. 1918.

.....
Solicitor General of the U. S.

APPENDIX

TO APPELLANTS' MOTION TO REMAND FOR ADDITIONAL FINDINGS

That part of the claimants' motion made on August 9, 1915, to amend the findings of fact made by the Court of Claims on May 17, 1915, appears on pages 77 to 167 inclusive, of said motion, and is as follows:

FINDING 9.

Amend finding nine, paragraph 1, line 7, by inserting after the word *"funds,"* the following:

> and represent the claims of these people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen. R. 320-321, Ex. 11.

The above amendment is based upon the contract between Winton and Owen, and uses practically the same language as does said contract. The finding as now stated does not state in any way whatever the services to be rendered by Owen and in fact it infers that Owen was only to provide the funds. It is therefore very material that the Court should make this amendment in order to show what services were contemplated to be rendered by Owen at the very beginning of the struggle, or the "long and somewhat furious contest" to obtain for the Mississippi Choctaws rights to citizenship in the Choctaw Nation?

FINDING 10.

Amend finding ten, lines five and six, by striking therefrom the following words:

> some of said contracts being taken in the name of said Winton, some in the name of said Owen, and

some in the name of Charles S. Daley, of New York City.

This same amendment was proposed in the plaintiffs' Motion to Amend the Tentative Findings of Fact, and that it should be made was *practically admitted* in the Reply filed thereto by counsel for the defendants. Plaintiffs' Motion, Vol. 10, p. 39; Defendants' Reply, Vol. 10, p. 325.

FINDING 11.

Amend finding eleven, paragraph 2, line 1, by striking out the word *"spoke"* and insert in lieu thereof, the following:

> presented an oral argument and written brief (the latter in accordance with the request of Mr. Williams),
>
> R. 335-6, Question 3, R. 542, Question 19, R. 548, Question 9, R. 552-3, letter of Mr. Williams to Mr. Wright, dated April 12, 1909, R. 554-5; letter of Mr. Williams to Mr. Thompson, dated April 12, 1909.

Further amend finding eleven by striking out the third paragraph thereof, for the reason that the facts stated in said paragraph are not established by the Record, and insert in lieu thereof the first two sentences of the eleventh tentative finding made by the Court on December 7, 1914, and to which neither the attorney for the plaintiff nor for the defendant has at any time heretofore objected, which reads as follows:

> At the time of the making of these contracts by Winton and Owen, the Mississippi Choctaws, full bloods, were extremely poor, living in insanitary conditions, and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and politi-

cal privileges. In the year 1896 said Owen approached Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full blood Choctaws in Mississippi then resided, and as the result of statements made and documents and arguments submitted by him (the said Owen) said Owen convinced said Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation.

The above paragraph, taken from the tentative Findings, is in all respects established by the evidence, and inasmuch as counsel for the Defendants, in his Motion filed January 28, 1915, moved to amend in certain particulars, said eleventh finding, and did not object to any of the facts stated in said paragraph, is sufficient to now warrant the statement that he admitted that the Record evidence established the facts therein stated. Vol. 10, p. 232.

FINDING 12.

Amend finding twelve, paragraph 1, line 2, by striking out the words, *"a number of,"* and insert in lieu thereof the word, *"the."* Ex. I, R. L. O., p. 52.

Further amend finding twelve, paragraph 1, line 5, by striking out the words, *"a number of,"* and insert in lieu thereof the word, *"the."* Ex. 1, R. L. O., p. 54.

An examination of the two memorials above referred to in support of these two amendments, finding twelve, shows that Congress was memorialized in behalf of *the* Mississippi Choctaws—that is, in behalf of legislation giving relief to *all* Mississippi Choctaws.

The first memorial referred to in said finding is entitled *"Memorial of the Mississippi Choctaws."*

The second memorial is entitled *"Memorial of Mississippi*

Choctaws," and both memorials are signed by *"C. F. Winton, Counsel."*

The third memorial referred to in the second paragraph of said finding is somewhat fuller than the other two memorials and on the cover page, as well as on the first page, its title is given as *"Memorial and Petition on Behalf of the Mississippi Choctaws."* This third memorial, like the other two, is also signed by *"C. F. Winton, Counsel,"* and closes with the following words:

> "With sentiments of the most distinguished consideration, I have the honor to remain, on behalf of the Mississippi Choctaws, Your Faithful and Obedient Servant." Ex. 1, R. L. O., p. 85.

This third memorial is, as the Court states in the second paragraph of finding twelve—"of the same purport" as the other two memorials—that is, all three memorials petition Congress for the relief of *the* Mississippi Choctaws.

These three memorials, like the resolution, set out in the fifteenth finding, and which the Court there states was drawn by Owen, were prepared for the purpose of presenting to Congress the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation. The first memorial was presented in December, 1896; the second, in January, 1897, and the said resolution was passed by the Senate on February 11, 1897, which shows conclusively that both memorials, as well as the resolution, were prepared and presented in behalf of *the* Mississippi Choctaws, and *not merely a number* of them, and this, notwithstanding the fact that the two memorials were signed by only a number of the Mississippi Choctaws, on the well-established principle of law that a few, or several, of a class can act for the entire class. Only in this way could "the Mississippi Choctaws" be represented.

The Treaty of 1830 was signed on behalf of the Choctaws by only *one hundred and seventy-three Choctaws,* and it will not be contended, and never has been contended, by any one in this case, that the action of the one hundred and seventy-three Choctaws negotiating said Treaty, did not bind *all* Choctaws. The Congress of the United States, as well as the representatives of the Government negotiating the Treaty, recognized these one hundred and seventy-three Choctaws as acting for and speaking for *all* Choctaws.

The supplemental treaty with the Choctaws, of September 28, 1830, 7 Stat., 340, bound all Choctaws, and was only signed by *nineteen Choctaws,* some of whom were not even parties to the Dancing Rabbit Creek Treaty made the day before, September 27, 1830; and it must be remembered that at the time the Treaty of September 27, 1830, and the supplemental treaty of September 28, 1830, was entered into by the Government of the United States, with these individual Choctaws, the Choctaw Nation or tribe had been abolished by the Legislature of Mississippi, as stated in finding four, and the law of Mississippi at that time made it a penal offense for any man to exercise the office of Chief, Mingo, etc., a law still in full force.

The first memorial was signed not only by "C. F. Winton, Counsel" for the Mississippi Choctaws, but was also signed by *"The Mississippi Choctaws."*

The second memorial was not only signed by C. F. Winton, Counsel in behalf of the Mississippi Choctaws, but was also signed by *two hundred and forty-seven* Mississippi Choctaws *"acting each for himself and the members of his family."* Ex. 1, R. L. O., pp. 60-1.

At page 2574 of the Record Mr. Owen testifies as follows:

"I was their attorney upon the authority of 1,000 in-

dividuals in the first case, and later on upon the authority of nearly 2,000 individuals."

It would therefore seem that if 173 individual Choctaws negotiating and signing the Treaty of September 27, 1830, and the 19 individual Choctaws negotiating and signing the supplemental Treaty of September 28, 1830, had sufficient authority to act for and bind *all* the Choctaws, which numbered many thousands, Owen and Winton had sufficient authority, when they represented practically all, and certainly a majority of the Mississippi Choctaws, to act for *all* the Mississippi Choctaws. The 247 Mississippi Choctaws signing the second memorial presented to Congress in January, 1897, signed not only for themselves, but also for their families, and, allowing five to a family this memorial alone represented more than a thousand Mississippi Choctaws.

That Owen and Winton were acting for *all* the Mississippi Choctaws is also evidenced by the fact that the circular letter sent out on July 1, 1898, and signed by C. F. Winton, was addressed—*"To the Mississippi Choctaws,"* Ex. 1, R. L. O., p. 174, the same as was the notice of December 2, 1898, sent out by the Dawes Commission *"To the Mississippi Choctaw Indians."* Ex. 1, R. L. O., p. 176. Both of these circulars or notices referred to the same Act of Congress, that of June 28, 1898, and both were addressed to "To the Mississippi Choctaws."

The memorial or petition of the Mississippi Choctaws presented to the House on February 13, 1900, by Mr. Williams, was on behalf of *all* Choctaws, and was signed by *"The Mississippi Choctaws,* by C. F. Winton, Logan, DeMond and Harby, Attorneys for the Petitioners." Ex. 1, R. L. O., p. 180.

The *"Petition of the Mississippi Choctaws"* presented to

the Senate on April 4, 1900, by Senator Stewart was in behalf of *all* Mississippi Choctaws, and was signed by *"The Mississippi Choctaws,* Logan, DeMond and Harby, and C. F. Winton, Counsel." Ex. 1, R. L. O., p. 202.

The Report made by Mr. Little, of the House Committee on Indian Affairs, January 29, 1901, refers to the contention made in behalf of *the* Mississippi Choctaws. Ex. 1, R. L. O., p. 242. And it was Owen and Winton who made this contention for them.

The memorial of April 24, 1902, was likewise in behalf of *the* Mississippi Choctaws, and was signed by *"The Mississippi Choctaws,* by C. F. Winton, Robt. L. Owen, Counsel." Ex. 1, R. L. O., pp. 281-4.

On March 15, 1904, Mr. Stephens, of Texas, presented to the House a "Memorial of Mississippi Choctaw Indians," which was likewise signed by "The Mississippi Choctaws, by C. F. Winton, R. L. Owen, Counsel." Ex. 1, R. L. O., p. 341.

The original petition filed in this case was against *the* Mississippi Choctaws. In fact, from the very beginning of this *"long and somewhat furious contest"* in behalf of *the* Mississippi Choctaws, runs a thread showing that at every step of the proceedings Owen and Winton were acting for and representing *all* Mississippi Choctaws.

In the cases of the Eastern Cherokees and the Western Cherokees—40 Ct. Clms., 252, 148 U. S. 247—the Court recognized the principle of law that a few of a class could act for the class, and rendered judgment accordingly.

See pages 91-94 *post.*

FINDING 15.

Amend finding fifteen by adding thereto a paragraph as follows:

About this time the said Owen made an argument

before the Committee on Indian Affairs of the House of Representatives, when considering House Bill 10372, which resulted in a favorable report being made by said Committee on said Bill, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and which Report had been drawn and submitted by Mr. Owen. Ex. 1, R. L. O., 90. Said favorable Report is known as H. R. Rep. 3080, 54th Cong., 2d Sess. R. 292-3.

FINDING 16.

Amend finding sixteen by striking out the last paragraph, and insert in lieu thereof a paragraph as follows:

> The above provision, 30 Stat., p. 83, was inserted in said Indian Appropriation Act, in the Senate, as the result of an effort made by Owen and Winton, to have enacted a provision more favorable to the Mississippi Choctaws. R. 293.

The facts stated in this paragraph of finding sixteen were no doubt taken from the Defendants' Motion to Amend the Tentative Findings, filed December 7, 1914, p. 310, Vol. 10, and R. 536 there cited in support of the Defendants' proposed amendment, and pp. 33 to 43 Defendants' Original Request for Findings of Fact do not establish the fact stated in said paragraph. The citation, p. 536, is to the deposition of Mr. Williams, where Mr. Williams testifies on this question as follows:

> I introduced the bill containing that language, or language similar to it, or else introduced a resolution that became a part of the appropriation act. I have not the papers with me now, and I do not know just precisely how I did introduce that, though my recollection is that subsequently it was adopted in the manner in which it here appears. I think the language

which you read is not identically the language of my bill, but is as the Committee on Indian Affairs amended it. That is my recollection.

Mr. Williams is mistaken. Said provision was not inserted in the Act of June 7, 1897, while the bill was being considered in the House, but was inserted in the Senate. The proceedings in the Senate relative to the passage of the above provision as shown by the Congressional Record are as follows:

Mr. Walthall: I ask unanimous consent of the Senate to consider the amendment which I propose at this time, as I am obliged to leave the Chamber within the next thirty or forty minutes.

The Presiding Officer: The Senator from Mississippi asks unanimous consent that an amendment which he proposes may be now considered. Is there objection? The Chair hears none. The amendment will be stated.

The Secretary: In line 2, page 57, after the word "services," it is proposed to insert:

"That the said commission shall without delay enroll the Choctaws now resident in the State of Mississippi as citizens of the Choctaw Nation, and such Choctaws who possess at least one-eighth of Choctaw blood shall be enrolled on a special roll, and are entitled to all the rights of Choctaw citizenship, except in the annuity under the treaty of 1830, as therein provided."

Mr. Pettigrew: Mr. President, the amendment offered by the Senator from Mississippi peremptorily requires that these Indians in Mississippi shall be placed upon the rolls. I have not had an opportunity to examine this question, so as to know whether they are entitled to be placed on the rolls or not, and entitled to a share of the property of these tribes; but I am willing to trust the Commission, which have power

and authority to investigate the question as to whether they are Choctaws or not and entitled to a share of this property. I therefore offer an amendment which I send to the desk as a substitute for the one offered by the Senator from Mississippi.

The Presiding Officer: The amendment will be stated.

The Secretary read as follows:

> "That the Commission appointed to negotiate with the five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaty, are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities."

Mr. Pettigrew: I appeal to the Senator from Mississippi to accept that as a substitute for his amendment.

Mr. Walthall: I should prefer very much to have the amendment in the form in which I submitted it, but I shall not detain the Senate at this late hour in discussing the matter. I will accept the substitute proposed by the Senator from South Dakota.

The Presiding Officer: The question is on the amendment submitted by the Senator from South Dakota.

The amendment was agreed to.

Mr. Walthall then asked and obtained consent to spread upon the record the 14th Article of the Dancing Rabbit Creek Treaty of September 27, 1830, and also a communication from the Secretary of the Interior transmitting certain information bearing on the subject in response to a resolution of the Senate. Cong. Rec., February 26, 1897, p. 2337, Vol. 29, p. 3.

The communication from the Secretary of the Interior, spread upon the record at the instance of Senator Jones, was the Secretary's reply to the Resolution prepared by

Mr. Owen, as stated in Finding 15, and on which Resolution Mr. Owen made an argument in the Interior Department before the Secretary made his reply thereto.

House Bill 10372 drawn by Owen, and upon which he obtained a favorable report (House Report 3080), was as follows, to wit:

54TH CONGRESS
2D SESSION
H. R. 10372.

IN THE HOUSE OF REPRESENTATIVES.

February 27, 1897.

Mr. Allen, of Mississippi, introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed.

A BILL

Providing for the enrollment of the Mississippi Choctaws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Commission to the Five Civilized Indian Tribes shall, without delay, enroll the Choctaws now resident in the State of Mississippi as citizens of the Choctaw Nation: *Provided,* That such Choctaws shall possess at least one-eighth of Choctaw blood, and be enrolled on a special roll and entitled to all the rights of Choctaw citizenship, except in the annuity under the treaty of eighteen hundred and thirty, as therein provided.

And it is perfectly obvious that Senator Walthall had introduced in the Senate the substance of the very bill drawn by Owen, and upon which he had received this favorable report, as a proposed amendment to the Indian

Appropriation Bill, and that his action resulted immediately in the compromise with Mr. Pettigrew which resulted in the Dawes Commission being instructed to make their famous report upon the rights of the Mississippi Choctaws.

From the above it must be, or should be, conceded that the resolution, which the Court states in finding fifteen was drawn by Owen, and the bill H. R. 10372, 54th Cong., Second Session, and Owen's activities were the cause of or resulted in the passage of the above amendment providing for an examination and report to Congress as to the status of the Mississippi Choctaws and their rights to Choctaw citizenship, because, as a reason for and an argument in favor of the adoption of the amendment, Mr. Walthall asked and obtained consent to spread upon the record a communication from the Secretary of the Interior, transmitting certain information bearing on the subject, and which was called for and furnished as a result of the resolution which Owen prepared.

An examination of pages 33-43, Defendants' Original Brief, discussing the Act of June 7, 1897, will show that he, on page 36, simply sets out said provision, and on page 39 Counsel for the Defendants states that Mr. Williams, when asked the direct question, answered that he was responsible for the item in the Appropriation Act of June 7, 1897, calling upon the Dawes Commission for a report upon the rights of the Mississippi Choctaws, and then quotes that part of Mr. Williams' evidence on this question, hereinbefore set out. Notwithstanding the fact that Counsel for the Defendants has repeatedly referred to the statement that Senator Williams prepared said provision, and notwithstanding the fact that Senator Williams testified that he *"introduced the bill containing that language, or language similar to it, or else introduced a resolution that became a part of the appropriation act,"* an examination of

the Congressional Record for the days on which the Act of June 7, 1897, was considered in the House, fails to show any bill or resolution introduced by Mr. Williams relating to the Mississippi Choctaws, or any remarks whatever made by Mr. Williams relating to the Mississippi Choctaws either during the 54th Congress or the 55th Congress, the index of the Congressional Record showing no remarks, no votes, no amendments or bills offered relating to the Mississippi Choctaws by Mr. Williams,—that is, from the year 1896 down to March, 1899, while the index shows the activities of Senator Walthall from Mississippi and Congressman Allen from Mississippi and Senator Jones and Mr. Little and Senator Platt and Mr. Curtis, a chronological abstract of which for the 54th and 55th Congresses, taken from the index of the Congressional Record, is here submitted, and is as follows:

CHRONOLOGICAL ABSTRACT OF MEMORIALS, BILLS, AMENDMENTS, AND ACTS OF CONGRESS RELATING TO THE MISSISSIPPI CHOCTAWS.

54TH CONGRESS, 2D SESSION, December, 1896—March, 1897. Walthall Resolution of February 11, 1897, in the Senate calling on the Secretary for certain information with respect to the Mississippi Choctaws. For copy of Resolution see Senate Document 129.

Senate Document 129, February 16, 1897—Letter from Secretary of the Interior in response to the Walthall Resolution.

H. R. 10372, by Allen, of Mississippi, a Bill providing for the enrollment of Mississippi Choctaws.

H. R. 3080, on the above bill. No further action thereon.

55TH CONGRESS, 1ST SESSION, March, 1897, to July, 1897.

H. R. 1861 by Allen, of Mississippi, providing the enrollment of Mississippi Choctaws. No action.

2D SESSION, December, 1897, to July, 1898.

H. Doc. 274, February 3, 1898, Letter of Secretary of the Interior transmitting Report of the Commission to the Five Civilized Tribes relative to Mississippi Choctaws in response to the following provision contained in the Indian Appropriation Act of June 7, 1897: "That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

H. R. 8581,—For the protection of the citizens of Indian Territory and for other purposes, by Mr. Curtis, of Kansas.

H. R. 593, March 1, 1898, on the above.

S. 3544, by Senator Jones, of Arkansas,—A Bill to provide for the submission to the Court of Claims the claim of the Mississippi Choctaws for the determination of their rights. Passed the Senate.

H. Rep. 1118, April 20, 1898, on the above bill. No further action.

H. R. 7702, by Mr. Little, same as S. 3544 above. No action.

Public No. 162—An Act for the protection of the people of Indian Territory, etc., approved June 28, 1898.

3D SESSION, December 1898, to March 3, 1899.

S. 5340, by Senator Platt—To adjudicate the claims of the Mississippi Choctaws.

S. 5350, by Senator Jones, of Arkansas—To adjudicate the claims of the Mississippi Choctaws.

The other pages—41, 42 and 43—cited by the Defendants' Counsel contain nothing whatever relative to the passage of the provision in question.

FINDING 17.

Amend finding seventeen, paragraph one, line two, by striking out the words *"of some."*

This paragraph, with the exception of the words "of some," to which objection is here made, is *verbatim* with the first paragraph of the seventeenth finding made by the Court on December 7, 1914. No objection was made, nor amendment offered to this paragraph by the Defendants in either their Motion to Amend, filed on January 28, 1915, or in their Reply to Plaintiffs' Motion to Amend.

The provision of the Act of June 7, 1897, following upon the direction of which Mr. Owen appeared before the Dawes Commission, had reference to *"The* Mississippi Choctaws," and not to some of them. The appearance of Mr. Owen before the Dawes Commission was when that Commission was considering said provision of the Act of June 7, 1897, and, inasmuch as that provision pertained to *the* Mississippi Choctaws, Mr. Owen's argument before the Dawes Commission must necessarily have been in the interest of *the* Mississippi Choctaws, and not only in the interests of some of them. Furthermore, not one word of evidence can be found in the record of this case to warrant, in the findings of fact, the insertion of these words "of some" in this paragraph.

MR. McKENNON, testifying as to Mr. Owen's appearance before the Dawes Commission, says:

> "I can't say that he (Owen) appeared as to any particular individual. I know that he appeared before us and I had considerable conversation with him and he furnished me some documents." (R. p. 512.)

Certainly Mr. Owen did not appear in behalf of any particular individual, but appeared in behalf of all the Mississippi Choctaws. Even the case of Jack Amos was a test

case and in that way was in the interest of every Mississippi Choctaw, and when appearing in that case Mr. Owen not only appeared for Jack Amos and ninety-seven others —parties to that suit and their families—but in the interest of and for every Mississippi Choctaw interested in and affected by that decision.

Testifying on this question, Mr. Owen says, in 1909, that:

> "It was generally understood that I was the attorney of the Mississippi Choctaws, and I regarded myself so because I had represented them continuously for six years prior to this time." R. 2573.

SENATOR JAMES K. JONES, Chairman of the Indian Committee of U. S. Senate, testified to the work done by Mr. Owen in behalf of *the* Mississippi Choctaws. R. 317, 413-15.

Senator Jones said:

> "I was on the Committee of Indian Affairs during my entire service in the Senate, and I know the constant work done by you (Owen) in behalf of the Mississippi Choctaws; but for your untiring efforts in their behalf, they would never have had any recognition. If my personal knowledge of your efforts on this line will at any time be of use, please let me know and I can state the facts in a way that will satisfy anybody."

VICE-PRESIDENT SHERMAN, Chairman of the Committee on Indian Affairs of the House from December, 1895, to March 4, 1909, during this "long and somewhat furious contest," referring to the services rendered by Mr. Owen in behalf of *the* Mississippi Choctaws, says that:

"I am well aware that for years your services have been assiduous and constant for these people and that you have presented their case before the Indian Committee time and again with a clearness and a force which clearly demonstrated that you had mastered the subject, and to master that subject meant the expenditure of almost limitless time." R. 317.

CONGRESSMAN LITTLE, with reference to Mr. Owen's connection with legislation in the interests of "The Mississippi Choctaws," says that Mr. Owen had

"been persistent in pressing legislation for their enrollment," and "on various occasions presented strong and forcible arguments in their behalf, and have also appeared before the Committees having this subject in charge in their interest; that your services in connection with this legislation have been faithful and efficient. I make this statement in justice to you." R. 318.

MR. STEPHENS, for many years a member of the Indian Committee of the House, and the present Chairman of the Indian Committee, speaking of Mr. Owen's services in behalf of the Mississippi Choctaws, says that Mr. Owen

"has been untiring in his efforts to secure the recognition of the Mississippi Choctaws and to secure their proper enrollment. His continued attention to this matter has, in my judgment, been of *great value* to the Mississippi Choctaws, as he has been unceasing in his efforts to secure their recognition." R. 318. (Italics mine. W. W. S.)

MR. STEPHENS is still a member of the House, and when in 1909 he was examined as a witness in behalf of the estate of Chester Howe, he testified that Owen often appeared before the Committee on Indian Affairs of the

House and the sub-committee having charge of legislation pertaining to the five Civilized Tribes in behalf of the Mississippi Choctaws. R. 116, MMS. pp. 6-7.

SENATOR MONEY, of Mississippi, said in 1903, speaking of Mr. Owen, that he

> "was very active and influential for several years in securing favorable legislation for the Choctaw Indians. He prepared arguments and made many useful suggestions to help to shape the legislation and was persistent in advocating the rights of the Indians. I know this of my own knowledge and it gives me pleasure to say so." R. 318.

SENATOR CURTIS says that he knows that Mr. Owen

> "appeared before the Committee on Indian Affairs several times each Congress in regard to the Mississippi Choctaws, *and that it was generally understood that you were their attorney.*" R. 319, 410-11. (Italics mine. W. W. S.)

See also pages 80-84 *supra.*

FINDING 18.

Amend finding eighteen by striking therefrom the last paragraph, for the reason that the evidence does not establish the facts therein stated.

This paragraph of finding eighteen is almost identical with the amendment offered by the Defendants to tentative finding eighteen, R. Vol. 10, p. 233, and in support of said paragraph Defendants there cite the record pages 499-501, 536-539. An examination of these pages of the record shows that the Defendants rely upon the testimony of Mr. McKennon and Mr. Williams. The testimony of Mr. McKennon is that he *thought* that Mr. Williams prepared said provision. R. 499. The pages 536-539 are to the

deposition of Mr. Williams, but he only speaks of this provision on page 539, where he says that:

> "My attention was called to the language immediately preceding the proviso, to wit: * * * I do not remember whether my attention was called to this by Captain McKennon, or by reading the bill as it first appeared from the Committee. I think both. * * * I submitted it to Mr. Curtis, who was in charge of the bill and it became a part of the Act. I think it was offered by Mr. Curtis as a Committee Amendment, but I drew it up."

MR. OWEN, testifying about the passage of this provision, says:

> "This provision (referring to the sentence immediately preceding the proviso) was ruinous to the full-blood Mississippi Choctaws because they had not previously removed, and they would have been definitely barred by this act of Congress if it had become a law. I therefore personally prepared the language which immediately follows: to wit:
>
> > "'*Provided, however,* that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have, under the laws of or treaties with the United States.'
>
> "I made a number of carbon copies of this item. I appealed to John Sharp Williams to assist me in this matter, called on him in the House, got him to go over to the Senate side to see the Senators of Mississippi and ask their assistance." R. 2505. See also 2515—16 Q. 22.

Testifying further Mr. Owen tells in detail that he drew this provision and gave it to Mr. Williams. He says: "I personally drew it and put it in his hands in the hall lead-

ing from the House of Representatives to Statuary Hall. I remember it very well because the Curtis Act, as drawn, excited me, since the language would have inevitably defeated my clients, the Mississippi Choctaws, of any recovery, and I was greatly disturbed about it." R. 2561.

It will be noted that Mr. Williams qualifies his statement by saying that the provision was prepared by him and at the request of no other human being

"that I remember,"

while Mr. Owen, as above set out, testifies emphatically and definitely that he prepared the provision and presented it to Mr. Williams.

If said paragraph should stand, however, and not be stricken from the findings, it should be changed or amended so as to read as follows:

> The foregoing proviso was advocated by Mr. Owen and Mr. Williams presented it to Mr. Curtis then in charge of the Bill, who offered it as an amendment to the same, and it became a law.

The provision as changed above practically states the facts as testified to by both Mr. Williams and Mr. Owen, considering the fact that Mr. Williams testifies only as he remembers the facts, while Mr. Owen testified very emphatically that he prepared and handed the provision to Mr. Williams. We omit the controverted point as to who prepared it.

FINDING 19.

Amend finding nineteen, paragraph 2, line 4, by striking therefrom the words *"notified all,"* and insert in lieu thereof, the words:

notifying the

This circular letter or notice sent out by the Dawes Commission was addressed "To The Mississippi Choctaw Indians." The notice of July 1, 1898, which Winton sent out was addressed "To the Mississippi Choctaws." It would therefore seem that both notices were practically the same as to whom they were addressed. Ex. 1, R. L. O., pp. 174, 176.

In this connection the Court's attention is invited to the fact that, no one has testified, in behalf of the Defendants or anyone else, that the Dawes Commission notified *all* the Choctaws. The paragraph with the amendment correctly states just exactly what was done as to notifying, or rather, as to the effort made by the Dawes Commission to notify the Choctaws of the Commission's proposed meetings in Mississippi.

FINDING 20.

Amend finding twenty, paragraph 1, by striking from the last sentence thereof the following words:

> never approved by the Secretary and was withdrawn by the Commission, December 20, 1900, a duplicate copy of which having been retained in the Indian Office and the same was,

so that said sentence, after amendment, will read as follows:

> Said schedule was formally disapproved by the Secretary March 3, 1907.

This sentence of finding twenty contains an error of fact when it states that the Commission withdrew the schedule of March 10, 1899. The fact as shown by the record is that the Commission, instead of withdrawing said schedule, *attempted to withdraw it*, on December 28, 1900, R. 2870,

and the Secretary of the Interior, on January 9, 1901, R. 2872, and again on February 7, 1901, R. 2878, refused to permit the Dawes Commission to withdraw said schedule, and instructed said Commission to make no changes in said schedule of March 10, 1899.

It will also be noted that in finding twenty-six, p. 12, reference is made in the last paragraph, fourth line, to the fact that the Dawes Commission had requested permission to withdraw this schedule, but no reference is made to how the request was acted upon, inferring, however, that the request was not granted, which the record undoubtedly shows to be the fact.

Further amend finding twenty by striking therefrom paragraphs 2, 3, 4 and 5, being all of said findings on page 10, for the reason that the facts therein stated are not established by the evidence, and insert in lieu thereof, two paragraphs as follows:

> After the circular of July 1, 1898, set out in finding nineteen, was sent to the Mississippi Choctaws, Winton and associates co-operated with the Dawes Commission in obtaining a rapid identification of the Mississippi Choctaws by Winton going personally into the various counties where the Mississippi Choctaws lived and sending runners throughout the country urging the Mississippi Choctaws to appear before the Dawes Commission for identification. Rec. 294, 309, 311. Ex. 3, R. L. O., Dep. Rec. 522-4, Finding 43, p. 29, paragraph 2.
>
> Plaintiff Owen prepared at considerable expense and furnished the Dawes Commission with an alphabetical index containing the names of sixteen thousand Choctaws which Commissioner McKennon testified was of great value to the Commission in identifying the Mississippi Choctaws. A duplicate copy of this alphabetical index has been by Owen filed in this case. Ex. 2, R. L. O. Dep. Rec. 294, 402.

The first paragraph on page 10, with two exceptions, is the same as found by the Court on this question in the tentative findings filed December 7, 1914. Motion was made to strike this same paragraph from said tentative findings, and in the reply brief filed by the Defendants, objection was made to the Plaintiff's Motion, and citation was there made to pages 503-6, 521-526 of the record as containing positive and affirmative evidence establishing the facts stated in said paragraph. R. 331, Vol. 10. Examining pages 503-6 we find the evidence on this question to be as follows:

On page 503 the only reference to this subject by the witness McKennon is that he identifies the Dawes Commission Report of March 10, 1899. Q. 77.

On page 504 the witness, McKennon, simply testifies that he had a conference with Winton while in Mississippi, in which he, McKennon, protested against him, Winton, taking contracts with the Indians. Q. 86-90.

On page 505 the witness, McKennon, testifies that he complained to Winton that Winton's work was confusing the Indians and troubling them and interfering with the work of the Commission, and that there was a stenographic report of the conversation between himself and Winton, Q. 91. This stenographic report will be found printed at pages 522-524 of the record. That conference as reported is as follows:

> *Commissioner McKennon:* Mr. Winton, I find that your work here is greatly confusing these Indians and troubling them and interfering with the work of the Commission.
>
> *Mr. Winton:* I don't know why it should.
>
> *Commissioner McKennon:* They understand that you are working for the Government.
>
> *Mr. Winton:* They should not understand that because there has been no such representation made to them.

Commissioner McKennon: They are confused and troubled about you, and many of them are not decided what to do; they do not understand it, and for that they do not know whether to come before the Commission or not. They understand that you will get part of what they get.

Mr. Winton: They do not understand that.

Commissioner McKennon: They say so.

Mr. Winton: It is because those Indians stand around there. Zeb Smith is one of them.

Commissioner McKennon: They tell me that they are confused by your work.

Mr. Winton: The facts do not bear it out, because the people I have dealt with were the first ones to go in before you. I understand that the people and merchants here would like to see them make their proof, because they are indebted to them and they want to get their claims through.

Commissioner McKennon: They do not understand these papers they sign; they tell me they do not understand.

Mr. Winton: I think they do understand, because the papers were read to them by the parties they are acquainted with; they understand them.

Commissioner McKennon: There are complaints against Mr. Welsh.

Mr. Winton: Mr. Welsh was recommended to me as one of the straightest men in the country.

Commissioner McKennon: That may be true; I tell you what the Indians say of him.

Mr. Winton: That is brought about by talebearers who want to make trouble.

Commissioner McKennon: They are men with whom you have contracts.

Mr. Winton: Some of them may be.

Commissioner McKennon: And men with whom you have secured contracts since you came here?

Mr. Winton: I have not directly secured any contracts.

Commissioner McKennon: You and Welch together.

Mr. Winton: I think Mr. Welch got some. He is a brother of the other (Welch), and he got ten to come here where you would not have got one.

Commissioner McKennon: It is because of these contracts; that is why they are shy of coming in.

Mr. Winton: They have been informed that we had nothing to do with your court. Everything has been fair and square. My connection is with the very best of people here.

Commissioner McKennon: They are not coming because of these contracts.

Mr. Winton: They would not come anyway. I know that that is not the reason. They think they are to be forced over there.

Commissioner McKennon: I am presenting to you now my information of the conditions, and I want to protest against any action that will interfere with the business of the Government, of which I have charge.

Mr. Winton: I don't know why you want to do that, because I am not interfering. If anyone asks me, I will and do tell him to go in and see you.

Commissioner McKennon: I am acting upon my information from the Indians, for I have not talked with anybody else about it.

Mr. Winton: I do not think it is fair for you to make this protest when I am not interfering.

Commissioner McKennon: I am simply presenting to you, instead of going somewhere else, just the information that I will give to the Government.

Mr. Winton: Yes, sir, I will make a report, too, for I have reputable people here that will stand by the truth. I come here because I promised them I would be here. I am not making any contracts with them today, or influencing them in any way.

Commissioner McKennon: I felt it my duty to inform you of the conditions as I understand it from the Indians.

Mr. Winton: But you are making a protest on what some Indian has told you.

Commissioner McKennon: I said some Indians.

Mr. Winton: That sort of thing is easy to work up.

Commissioner McKennon: Yes, sir; I know that they can be worked up.

Mr. Winton: You seem to make an official act out of something that does not deserve it.

Commissioner McKennon: These Indians don't understand; they understand now that if they go before the Commission that you will get half of what they get, and they feel like they ought to be protected against that. That is what I want to say. Simply wanted to inform you.

Mr. Winton: Will you give me the names of those Indians?

Commissioner McKennon: I don't know them. I will take their statements and their names will appear of record.

Mr. Winton: Then their names will appear of record and I will get a chance. I have made no false representations and have simply explained to them what I understand to be the situation, and was working to give them the best services I could. I was working in good faith and not working any swindle.

Commissioner McKennon: Your contracts are for one-half what they get.

Mr. Winton: I admit that. When I started in I thought that would be fair. There has been a great deal of expense.

Commissioner McKennon: I have found nothing that you or anyone else has done that has contributed to the present course of the Government in dealing with this matter.

Mr. Winton: I do not care to discuss that any further. I work in connection with other men who are well informed, and I believe yet they will; but I may be mistaken.

It will be noted that Mr. Winton in this conference told the witness McKennon that "The people I have dealt with were the first ones to go in before you," and further states

that a Mr. Welch who was working for Winton got ten Indians to come before the Commission, where McKennon could not have gotten one, and that Mr. Winton specifically and emphatically denied interfering with the business of the Government, then in charge of Mr. McKennon.

Page 506 is devoted to certain *ex parte* statements taken from Indians relative to the making of contracts with Winton and an objection entered by the Attorney for the Plaintiffs to the admissibility and competency of said *ex parte* statements as evidence.

Pages 521-526 cited by the Defendants contain these *ex parte* statements and the conference which McKennon had with Winton, hereinbefore set out. Witnesses other than Mr. McKennon have testified on this question and their testimony relative thereto, but not cited by the attorney for the defendants, is as follows:

W. L. HART, a witness examined in behalf of the interveners, in answer to question 22 as to what Mr. Winton was doing in Mississippi in 1899, testified that he, Winton, was getting them (Mississippi Choctaws) before the Dawes Commission; getting them enrolled and making contracts with them. R. 190, Q. 22-23.

MR. OWEN, testifying in 1907, said:

> "Winton thereupon went into Mississippi and assisted the Mississippi Choctaws in every way in his power to secure their enrollment," R. 294, and that
>
> "Winton's services in Mississippi, among other things, consisted in persuading the Mississippi Choctaws to appear before the Dawes Commission, many of them being opposed to appearing because they were grossly misled by the planters in Mississippi, * * * and they were induced to believe in many cases that the officials of the United States were there, not for their good, but for the purpose of getting their names so as to enlist them in the war with Spain.

* * * More than that they were told by people in Mississippi that Indian Territory was very unhealthful, that people sickened and died in Indian Territory, and they were further informed that Indian Territory was a place of great violence, where the lives of men were not safe." R. 309. See also Beall's Dep. R. 447, Q. 16.

MR. MURCHISON, relative to his and Winton's services in Mississippi in 1909, stated that:

> We would send out—I remember on one occasion talking in Leake County with Mr. Neale, and Mr. Neale and I went out one day up into an Indian settlement about 5 or 6 miles from Carthage, and went up and had a talk with a lot of Indians who hadn't been down, to get them to come down. There was a large settlement near Philadelphia, Miss., known as the Boguechitto settlement of Indians there, and we would send them people who were employed by us, and in whom they had confidence, to explain this matter to them and meet them, and get them to come down and come before the Commission, and especially to those who had made contracts with them. Of course we realized that we could do nothing for these Indians unless they appeared before the Commission and were identified. R. 341.
>
> Our chief anxiety was to secure the appearance of the Indians before the Commission for identification, and to assist them in that identification in every way possible. R. 342.

CAPTAIN McKENNON testified as follows:

> "My recollection is that his work among them made them backward about appearing before the Commission for the work I was doing."

And in answer to the question as to why they were backward, the Captain answered:

"I do not know, unless it was because they thought he was connected with the Commission in some way and they were being taken advantage of." R. 405, Q. 23, 24.

Captain McKennon in this answer corroborates what Mr. Owen testified to in 1907, hereinbefore set out—that the Indians were induced to believe that the Commission was getting their names so as to enlist them in the war with Spain.

CAPTAIN McKENNON was also examined as to what knowledge he had of the work done by Winton and associates in behalf of the Mississippi Choctaws prior to and at the time he wrote the Report, an extract of which is set out in paragraph 4 of finding twenty, and said that *he did not know at that time* that Winton and associates had been working for and in behalf of the Mississippi Choctaws—that is, that he did not know then that Winton had sent runners throughout the country at his own expense in an effort to cause the Mississippi Choctaws to come before the Commission for identification. R. 406. Q. 1, 2, 3.

Testifying further, Captain McKennon said that he met Mr. Winton in Mississippi as a stranger and that he merely saw in him a man making contracts with the Indians, and that he did not know then that Winton had been in their service for three years prior thereto, and did not know that Winton had presented the Mississippi Choctaw matter directly or indirectly before the Supreme Court, the Congress, and the Departments of the United States. R. 408, Q. 10, 11, 12, 13.

CAPTAIN McKENNON also testified that he does not remember that the Indians informed him that Mr. Winton had told them that he (Winton) was working for the Government. R. 409, Q. 4.

CAPTAIN McKENNON was again examined as a wit-

ness in behalf of the Defendants, and inasmuch as he is the author of the third paragraph of this finding, which is taken from the Dawes Commission Report of March 10, 1899, the Court's attention is invited to his answer to Question 115, R. 507, where he, with reference to that paragraph, says:

> "At that time we understood that the matter of their rights would probably be submitted to the Court of Claims, and I understood that this roll was made with a view of using it in a suit before the Court of Claims for the determination of their rights, and thought that was all that there was to be done then, and knew that it was my duty to object. I also thought it was unfair to the Indians. Then again it created confusion, and I thought interfered with the work of the Commission."

DAVID W. W. YANCEY was one of the clerks with Captain McKennon in Mississippi in 1899, and on this question testified as follows:

> "Mr. Richardson: Do you think, Mr. Yancey, that Mr. Winton was there to aid the Commission?"
>
> "The Witness: He told me—we usually stopped at the same hotel—that he was representing some of the people and furthering their enrollment."
>
> "14. Question. That was independent of your work?"
>
> "Answer. He didn't say. He said he was trying to gain their recognition."
>
> "1. Cross-interrogatory. You didn't encounter any opposition from Mr. Winton?"
>
> "Answer. No, sir; he told me he was trying to get the people to come in. Captain McKennon had that opinion, but I never thought so, except as I told you a while ago that he confused us in our work." R. 457.

MR. YANCEY was a witness called in behalf of the Defendants, and he also testified that during the three weeks that Captain McKennon was in Mississippi they identified 1,923 Mississippi Choctaws and rejected probably that many more. R. 457.

P. G. REUTER was another clerk with Captain McKennon on his trip to Mississippi in 1899, and testifying as a witness in behalf of the Defendants, said:

> "I know only a conversation I had with a number of the claimants (meaning the Indians) that they were informed that he could be an assistance to them in securing their allotments." R. 495-4.

and that he, Reuter, regarded Winton's presenting the claimant Indians to the Commission, whom the Commission found were not entitled to identification, was a hindrance to their work. R. 495-5.

Testifying further the witness Reuter said that he never knew of the enrollment of Indians *without the aid of counsel.* R. 495-6.

The above is practically all of the evidence relative to the facts set out in the second paragraph at the top of page 10, and the last answer of Captain McKennon, together with the extract, *if it be competent evidence,* from the Report of the Dawes Commission of March 10, 1899, set out in the fourth paragraph of finding twenty is all of the evidence upon which to base the facts stated in paragraph 2. If the facts are to be based upon the preponderance of the competent evidence in the record, then the facts stated in paragraph 2 should not be found by the Court, for the reason that the bulk of the competent evidence does not establish such facts, but, on the contrary, establishes the facts stated in the paragraph hereinbefore asked to be found in lieu of said second paragraph.

Paragraphs 3 and 4 to which objection is here made, contain nothing more nor less than *an expression of an opinion* had by Captain McKennon at the time he wrote the Dawes Commission report. Captain McKennon has been examined twice as a witness in behalf of the Defendants since writing that report; he has been examined and cross-examined, and such examination shows that at the time he wrote that report he was not informed as to everything Winton was doing and had done in behalf of the Mississippi Choctaws in his effort to cause them to come before the Dawes Commission for identification. In short, all of the information or knowledge on this subject Captain McKennon had at that time was that he knew that Winton, a stranger to him, was making contracts with the Mississippi Choctaws and he did not think he should do so.

During the examination of Captain McKennon, Counsel for Defendants introduced and offered in evidence the stenographic report of the conference which McKennon had with Winton at that time, 1899, and in that conference Winton *emphatically denies* that he is or was interfering with the work of identifying the Indians, and *affirmatively declares* that he and his associates were laboring to cause the Mississippi Choctaws to come before the Commission, and that their efforts in that direction had been more successful than the efforts made by the Commission, and further stated that the Indians whom he and his associates had seen, were the first Indians to come before the Commission for identification.

Considering the statements made by both McKennon and Winton, the Court has before it on this question only the opinion of McKennon as put in the report of March 10, 1899, while it has emphatic, positive statements from Winton to the contrary, and Winton's statements are not the

expression of his opinion, but emphatic, positive statements of fact.

Winton's statement is supported by the masterful, overpowering, circumstantial evidence, confessedly a fact, that McKennon actually passed upon and enrolled 1,923 Mississippi Choctaws and passed upon and rejected as many more within three weeks, showing positively that he was not retarded in passing on these cases, but assisted in a masterful manner by Owen and Winton.

Another objection to setting out in the Findings of Fact said extracts from the Dawes Commission Report of March 10, 1899, is that in that extract Captain McKennon gives it as his then opinion that persons securing contracts with the Indians could do nothing toward securing them benefits accruing under the Treaty of 1830, and he further expresses the opinion that the Hon. John Sharp Williams and the late Senator Walthall secured the legislation under which the Commission was then acting, and that their Congressmen may safely be trusted to further look after their interests. These opinions are shown to be thoroughly unsound by this record and within a year McKennon was the head of the firm of McKennon, Mansfield, McMurray & Cornish fighting the poor Mississippi Choctaws, and ultimately overthrowing this very McKennon report of March 10, 1899.

Are such statements of McKennon statements of fact, or expressions of opinion?

This witness has been examined and under oath has said that he at that time knew nothing about any effort made by Winton, Owen and associates in an effort to secure the legislation under which the Commission was then acting, and in fact did not know that Winton and associates had been working in behalf of the Mississippi Choctaws for three years prior thereto. Had he had such knowledge, his

opinion might have then been otherwise than as stated in the paragraph set out in this finding. Findings of Fact, however, should be based upon facts and not upon opinions as to what persons could not do and what Congressmen could do.

Captain McKennon, in this extract from the Dawes Commission Report of March 10, 1899, says that "their Congressmen may safely be trusted to further look after their interests."

Without casting any reflection upon the ability of their Congressmen to look after the rights of the Mississippi Choctaws, the Court's attention is respectfully invited to the fact that the interests of the Mississippi Choctaws were not looked after by any Congressmen from 1830 until 1896 —*a period of sixty-six years*— until Owen and Winton became interested in their behalf. It is safe to say that had not Winton and Owen become interested in behalf of the Mississippi Choctaws, they would to this day be living in poverty in the State of Mississippi. That this last statement is true is admitted by Senator Williams when being examined as a witness in behalf of the Defendants in 1909, after all the legislation in question had been enacted, and when he was speaking with a knowledge of all that had been done by everyone, including their Congressmen, in behalf of the Mississippi Choctaws, and that evidence is that Owen was the first man to present the question of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation to him, and that at first blush he did not think there was much to it, and requested Owen to prepare him a brief on that question, which Owen did, and in that way *Williams was convinced* that the Mississippi Choctaws did have rights to citizenship in the Choctaw Nation under the Treaty of 1830. R. 548. The Court will remember that Mr. Williams, asking the Indian Office as to the rights of the

Mississippi Choctaws, was left under the impression they had none. R. 2939, 2948-9-a.

Speaking further and in a letter written on April 12, 1909, to W. W. Wright, an attorney not for Winton, but for the interveners Howe, Vernon and Bounds, Mr. Williams says:

> "The only man I remember making suggestions to me—and he was the man who originally brought the question of the rights of the Mississippi Choctaws to my mind—was Robert L. Owen, now a Senator from Oklahoma. * * * If it had not been for Owen I probably never would have set about it, because my attention might not have been called to the situation." Rec. 552-3.

If it is proper to include in finding twenty an extract from the Dawes Commission Report of March 10, 1899, because said extract is taken from an official report made at the time of the occurrence, then it is respectfully submitted that there should be added to that finding a paragraph based upon the stenographic report of the conference that McKennon had with Winton *at that time*, stating that Winton emphatically stated that he was not interfering with the work of identifying the Indians, but, on the other hand, was doing all he could, and was, as a matter of fact, aiding, assisting in, and expediting the work of identifying the Mississippi Choctaws. One is as competent as the other on which to base a finding of fact, and if there is any difference, Winton's emphatic statements of fact should be given more weight by the Court when considering the question as to what Winton was doing in Mississippi, than the mere expressions of opinion on the part of McKennon.

Another matter to which the Court's attention is invited in this connection is that the third and fourth lines of said

second paragraph of finding twenty, top of page 10, contain a statement of fact *not even referred to* by any of the witnesses testifying in this case, and certainly not mentioned by the witnesses whose testimony appears on the pages of the record cited by the Defendants in support of such statement. That statement of fact alleges that Winton

> "endeavored to prevent the Indians from appearing for identification until after Winton had first secured contracts with them."

That statement of fact is requested to be found by the Defendants in the second paragraph of the eighth request, p. 10, of Defendants' original brief, and in support of it Counsel for Defendants cites pages 404, 405, 453, 495-3d, 507, 508, 521, 527, and nowhere on either of the nine pages of the record cited by Defendants in support of that paragraph of his request for findings of fact is it shown that Winton "endeavored to prevent the Indians from appearing for identification until after he had first secured contracts with them."

This sentence to which objection is made *verbatim* with the latter part of the second paragraph of the Defendants' eighth request, and if it is not established by the evidence set out on the nine pages cited by the Defendants, it is certainly safe to say that the record does not establish said fact.

SECOND PARAGRAPH OF PROPOSED AMENDMENT TO FINDING 20.

In support of the second paragraph which the Plaintiffs request the Court to find as a part of finding twenty, the Court's attention is invited to the fact that *it is an undisputed fact* that Mr. Owen prepared an alphabetical index

containing the names of 16,000 Choctaws, and furnished a copy thereof to the Dawes Commission. A copy of that index has been filed with the deposition of Mr. Owen, and marked Exhibit No. 3. On this question Mr. Owen testified as follows:

> "This list contained about 16,000 Choctaw names. I also furnished to the Dawes Commission, for the purpose of enabling them to perform their duty, a similar list." R. 294.

CAPTAIN McKENNON corroborates Mr. Owen as follows:

> "Q. Do you remember Mr. Owen furnishing you with an alphabetical index of the Choctaw Indians and with two bound volumes of the record of the Choctaw Nation v. The United States, with a view to assisting you to make up the schedule of Mississippi Choctaws?"
>
> "A. I remember Mr. Owen furnishing me the index to which you refer and other documents—I can't remember so much about the other documents—for the purpose you mention; and I will add that they greatly aided me in that work." R. 402.

The alphabetical index referred to gave the names of all Choctaws, and by the letters and symbols placed before the names of certain Choctaws indicated that they were Fourteenth Article claimants and where the family record could be found in over two thousand pages of records. This alphabetical index was not one made up from the records of the U. S. and the Choctaw Nation, and was printed by the Robert D. Patterson Stationery Company, St. Louis.

Referring to this index of Choctaw names, counsel for the Defendants, R. p. 330, Vol. 10, states that Mr. Owen does not say when he furnished a copy of this index to

in identifying the Mississippi Choctaws, and the witness McKennon, examined in behalf of the Defendants, has testified that it *"greatly aided me in that work,"* R. 402, and thereby expedited the work of identification.

The facts set out in the second paragraph hereinbefore requested to be found as a part of finding twenty, being established not only by the testimony of Owen, but by the testimony of the witness McKennon, introduced in behalf of the Defendants, it is respectfully asked and insisted that such facts should be found by the Court.

Paragraph Five, Finding 20.

As to the *fifth* paragraph of the *twentieth* finding, objection is made to it for the reason that it explains a statement made in the extract from the report of the Dawes Commission of March 10, 1899, and connects up Winton with Arnold and Turner. If Plaintiffs' contention is sound and good, that it is error to set out in finding twenty the extract giving Captain McKennon's *opinions,* it is also error to explain to whom reference was made in that extract giving the *opinion* of Captain McKennon. Another reason is that the Plaintiffs are not responsible for Arnold intervening in this case, and the Plaintiffs' case or the findings of fact pertaining alone to the Plaintiffs, should not be encumbered with facts pertaining to the interveners, and for that reason alone the said fifth paragraph should be stricken out.

FINDING 24.

Amend finding twenty-four by inserting after the first paragraph thereof, a paragraph as follows:

> During this period, from 1900 until the compromise settlement was made in the Choctaw-Chickasaw

either Mr. Winton or the Dawes Commission. Technically that statement may be considered correct, but the question propounded to Captain McKennon, and his answer thereto, fix the time when the said index was furnished the Dawes Commission, that is, said index was furnished to Captain McKennon to assist him in preparing the schedule of March 10, 1899, R. 402, Q. 6, and while Mr. Owen did not fix the year that he furnished the index to Mr. Winton, from a reading of his deposition where he testified about furnishing said index to Winton, it is evident that he furnished it to him about the time he went to Mississippi for the purpose of locating and assisting in the identification of the Mississippi Choctaws by the Dawes Commission in the early part of 1899, certainly prior to the making of the schedule of March 10, 1899. R. 294.

Counsel for the Defendants, on page 330 of the record, Vol. 10, says, referring to this alphabetical index, that

> "it is probable that this list was prepared for the use of the Indian agent during his incumbency."

By "Indian agent," reference is made to Mr. Owen. There is nothing in this record to warrant such a statement, it was untrue as a matter of fact, and it is respectfully submitted that it is wholly improper for counsel for the Defendants to undertake to support his contention by *submitting to the Court probabilities of his own imagination.* The Court should not be asked to make findings of fact supported by anything other than competent evidence, and certainly not by something which the Counsel for the Defendants states is only probable. This record shows that Owen prepared this alphabetical index at considerable expense and that he furnished it to the Dawes Commission for the purpose of assisting that Commission

agreement of July 1, 1902, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby, were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and contended that they had no rights and ought not to be enrolled as such citizens, and that no attention should be paid to their said claim to citizenship in the Choctaw Nation. Dep. of Ex-Indian Comm'r W. A. Jones, R. 3272, 3283, 3292, 3296; Dep. of Van Hoy, R. 3254-5-6.

The first paragraph of finding twenty-four is within itself practically enough to warrant the Court finding the facts in the paragraph last above proposed as an amendment to this finding, but the Court's attention is invited to what the witnesses Jones and Van Hoy have testified to on this question, which is as follows:

Indian Commissioner Jones said:

"Q. During the time that you were Commissioner what was the attitude of the Dawes Commission toward the Mississippi Choctaws?"

"A. Why, it was hostile, steadily so, so far as the Indian Office was concerned."

"Q. In what ways did they evidence their hostility?"

"A. They would come to me and discuss the matter and express their opinion that the Mississippi Choctaws had no rights and ought not to be enrolled, and that no attention ought to be paid to their claim. Judge McKennon especially was hostile, and I think Mr. Bixby also, both were at that time members of the Commission."

"Q. Did that hostility continue during your entire term of office?"

"A. I think it did." R. 3272.

With reference to the Act of July 1, 1902, Commissioner Jones testified as follows:

"Q. Do you recall what was the attitude of the Choctaw Nation with respect to that provision?"

"A. No, I don't remember. I know that the representatives of the Choctaw Nation wanted to get everything they could."

"Q. For the Mississippi Choctaws, you mean?"

"A. Yes, sir. *That is, the attorneys for the Mississippi Choctaws.*"

"Q. I am speaking of the attorneys for the Choctaw Nation, who were Mansfield, McMurray & Cornish."

"A. I don't remember what their attitude was."

"Q. Did they go to you about this proposition at all?"

"A. I think Mr. McMurray did several times, but as to what the conversation was, I don't remember. They visited my office a number of times, but generally on other matters."

"Q. Do you recall whether any members of the Dawes Commission were in Washington at the time of the hearings on this act?"

"A. I think they were."

"Q. Do you recall whether they were advocating this full blood amendment?"

"A. No, I don't remember. *The only thing I do recall is that they were opposed to considering anything favorable to the Mississippi Choctaws,* but I don't remember what their attitude was in regard to this."

"Q. Well, isn't that the only thing in that act which is favorable to the Mississippi Choctaws?"

"A. It seems to me that is the only thing. Judge McKennon is the only man who discussed the situation with me thoroughly. Mr. Bixby was here a good deal, but he and I disagreed right on the start as to the rights of the Mississippi Choctaws, and we agreed to disagree, so he didn't bother me, but he spent a great deal of time before the Committee of Congress and I *know he was hostile to the Mississippi Choctaws.*" R. 3283.

"Q. Do you recall the circumstances of the retirement of Commissioner McKennon?"

"A. No, I do not. I may have known about it at the time, but I don't recall it now."

"Q. For the purpose of refreshing your recollection, do you recall any arrangements that Mr. McKennon had made with the firm of Mansfield, McMurray & Cornish to become a member of the firm in the representation of the Choctaw and Chickasaw tribes?"

"A. I have heard of that but I don't know that it is true."

"Q. Did you notice any change in Mr. McKennon's attitude toward the Mississippi Choctaw Indians after about December, 1909" (1899)?

"A. No, I don't remember about that, Mr. Ballinger. The only thing I do recall is that as far as the intercourse with the Indian Office and with me personally is concerned he was not friendly to the Mississippi Choctaws." R. 3292.

"Q. Was he (McKennon), in 1902, opposed to the recognition of the full-blood Indian as a 14th Article claimant?"

"A. *Yes, he was always opposed to it.*"

"Q. Do you know what the attitude of Mr. Bixby was at that time with reference to the matter?"

"A. As I stated before, they were agreed on everything. *Mr. Bixby was at one time violently opposed to the matter,* but whether he experienced a change of heart I don't know. The last time I had any conversation with him he was very much opposed to it."

"Q. Then, so far as you know, all the members of the Dawes Commission were in 1900 and subsequent thereto opposed to legislation that would recognize the Mississippi Choctaw Indians?"

"A. Yes. R. 3295-6. (Italics mine. W. W. S.)

See also McKennon's Dep. R. 407-8.

On this question Van Hoy, at that time a law clerk in the Indian Office, testified as follows:

"Q. What was the attitude of the Dawes Commission relative to the rights of the Mississippi Choctaws while you were in office?"

"A. *Intensely hostile.*"

"Q. How did the Dawes Commission evidence their hostility?"

"A. By frequent official reports. By frequent conversations with myself and other employees in the office—and also by being in constant attendance upon the Secretary and committees in Congress while the Congress was in session, and opposing proposed legislation for the Mississippi Choctaws."

"Q. Were you personally present when they interposed such objections?"

"A. Before the Department, yes. Before the Committees in Congress, no. But several times—I won't give specific instances—I have heard them discussing matters with different members of Congress in these Mississippi Choctaw cases."

"Q. Did they at any conference in the Department at which you were present evidence hostility?"

"A. *Yes, I would say hundreds of times.*"

"Q. Did the members of the Commission in personal conversation with you ever evidence their hostility?"

"A. *Yes, sir.*"

"Q. State the circumstances and facts."

"A. The circumstances were simply that Mr. McKennon generally and Mr. Bixby and Mr. Breckinridge were in my office several times every winter when legislation was pending and conversed and talked with me officially and unofficially about the Mississippi Choctaws, as they did other legislation and in every instance *they evinced hostility by saying the Mississippi Choctaws were entitled to no rights, and should have no rights, and should never be enrolled.*"

"Q. Did you ever take any official action reversing the action of the Dawes Commission relative to the rights of the Mississippi Choctaws?"

"A. I have."

"Q. State what it was."

"A. To prepare for the signature of the Commissioner a great many reports to the Secretary; preparing reports for the signature of the Commissioner for transaction (transmission) to the Secretary recommending the reversal of the actions of the Commission. I can tell you of what some of them consisted."

"Q. Go ahead and put it all in."

"A. The Dawes Commission had been instructed by the Secretary, acting under the statute, to make rolls of the Mississippi Choctaws for enrollment. Amongst other things the Commission arbitrarily and absolutely refused to accept any applications, or file any applications, or make any record of an application, or even to note on the back of an application its rejection. * * * On another occasion when the Commission had refused to transmit all the evidence, I prepared another report to the Secretary and he forced the Dawes Commission then to take evidence and transmit the evidence to the Department. We had great trouble getting any information from the Dawes Commission, concerning the Mississippi Choctaws." R. 3454-6.

That Chairman Bixby was opposed to recognizing the rights of the Mississippi Choctaws is evidenced by a brief on file with the Attorney General, *opposing those rights*, and undertaking to justify the ruling of the Dawes Commission. This brief is set out at pages 3739-3742 of the record.

Chairman Bixby, of the Dawes Commission, in this brief resisted the enrollment of a mixed blood child of a full blood father entitled to enrollment under the agreement of July 1, 1902, showing, in the most peremptory manner, his opinion that under the law no Mississippi Choctaw full blood had any right to be enrolled unless he could show that his ancester had literally complied with the Fourteenth Article of the Treaty of 1830, and he says: «

"It will be seen from this that no provision is made for the identification of any person as a Mississippi Choctaw unless their claim to identification is based upon a compliance with the Fourteenth Article of the Treaty between the United States and the Choctaw Nation, concluded September 27, 1830," R. 3740.

which the Commission, in its report of March 10, 1899, had emphatically stated to Congress the Mississippi Choctaws could not do.

This attitude of the Dawes Commission is of the most urgent importance since the court has been under the impression that the Dawes Commission was making it its special duty to look after and enroll the unfortunate Mississippi Choctaws whereas, the Dawes Commission, having put this construction on the law, then sent to Congress on February 27, 1901, an agreement only recognizing Mississippi Choctaws "duly identified," and repeated this in the proposed agreement submitted to Congress on March 26, 1902, where again they use the language "duly identified," and which would, under this interpretation, have excluded practically all the Mississippi Choctaws. This attitude, together with their letter of May 19, 1902, R. 2881, and the letter of the Interior Department of June 3, 1902, R. 2879, approving said letter of May 19, 1902, is proof conclusive of record evidence, officially signed, showing where the Dawes Commission and the Interior Department stood in this "long and somewhat furious contest" for the enrollment of the Mississippi Choctaws.

That the representatives of the Choctaw Nation were opposed to recognizing the rights of the Mississippi Choctaws is shown by a statement made by Senator Stewart on the floor of the Senate, June 24, 1902, when considering Section 41 of the supplemental agreement of July 1, 1902. Referring to and opposing that section, Senator

Stewart, then Chairman of Senate Committee on Indian Affairs, said:

> "But the importation of the Mississippi Choctaws to this country, the Choctaws in the Territory would regard as unjust, so their representative tells me. I think it would be an outrage—I think it would defeat the Treaty." Cong. Rec. Vol. 35, part 7, pp. 7287-97.

Further amend finding twenty-four by adding thereto a paragraph as follows:

> "For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the Fourteenth Article of the Dancing Rabbit Creek Treaty. It was a most restricted ruling and resulted, as above stated, in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants."

This statement of fact is a truth of the highest importance in this case, and is taken from the opinion of the Court, p. 54.

FINDING 25.

Amend finding twenty-five by adding thereto a sentence as follows:

> The said Choctaw Cotton Company was on the 7th day of August, 1911, dissolved, and its charter annulled and surrendered by degree of the Circuit Court of Kanawa County, W. Va., and all of the stock of

said Choctaw Cotton Company has been filed in the Court by Owen and Winton, the owners thereof. R. 305, 2518, 2622-3, R. 2805.

FINDING 26.

Amend finding twenty-six, first paragraph, line six, by striking out the word "section," and insert in lieu thereof the word "sections," and after the figure 13, insert the following:

14 and 15.

Further amend finding twenty-six by striking out the second and third paragraphs, and insert in lieu thereof three paragraphs as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, 30 Stats., 495, and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State of Mississippi to Indian Territory, as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"14. All 'Mississippi Choctaws,' as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaws and Chickasaw tribes within six months after the *ratification* of this agreement shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be

set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such 'Mississippi Choctaw' fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him, and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement wherein it provides for patents to allottees." House Doc. 490, 65th Cong., 2d Sess., p. 12.

The above three sections were subsequently amended at a conference between representatives of the Interior Department, the Dawes Commission, and the delegates of the Choctaw and Chickasaw tribes. Said Sections 13, 14 and 15 as amended at said conference read as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, or the act of Congress approved May 31, 1900, may, at any time prior to September 1, 1901, make

bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior.

"14. When any such Mississippi Choctaw shall have continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him, as provided in that agreement for citizens of the Choctaw and Chickasaw Nations.

"15. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed or up to the time of the death of such Mississippi Choctaw in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value, according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement, wherein it provides for patents to allottees." House Doc. 490, 56th Cong., 2d Session, p. 5.

Further amend the fourth paragraph of said findings

twenty-six by striking out the first line, and insert in lieu thereof the following:

> The effect of these amendments at said conference in the Interior Department was to strike out the recognition of

FINDING 27.

Amend finding twenty-seven by striking therefrom the second sentence, as follows:

> During that year and the making of this roll, the conduct of said Winton and his associates, and that of James E. Arnold and Louis P. Hudson increased the work of enrollment, and impeded its progress.

The second sentence of this finding above set out is objected to for the reason that the *third* sentence excluding the last eleven words, correctly states the facts as to what happened at this time in Mississippi. With the *exception of this sentence and the last eleven words of the last sentence*, finding twenty is practically the same as the facts stated in the fourth paragraph of the Defendants' eighth request, and the Plaintiffs' amendment hereinbefore proposed to said finding twenty-seven. Defendants' brief, pp. 10, 11. Plaintiffs' brief, R. Vol. 10, p. 53.

The evidence in the case establishes the fact that Winton advised those Indians whose names appeared on the schedule of March 10, 1899, that it was not necessary for them to appear again before the Dawes Commission for identification, that to do so they might put their rights in jeopardy, and this fact is stated in that part of finding twenty to which no objection has been made by either the Plaintiffs or the Defendants.

No one has testified that this advice given by Winton

increased the work of enrollment. The strongest evidence as to this fact is that Winton's advice was "a matter of a great deal of annoyance" and interfered with the work of the Government, R. 436, 468, 491-2, in the opinion of the witnesses Beall, Bixby and Emerson.

Winton was counsel for and advising the Mississippi Choctaws as to what he conscientiously believed to be best for the Mississippi Choctaws to do in the matter of appearing before the Commission a second time for identification. When the advice was given the schedule was a finality under the law but the law was changed at a later date so as to require the approval of the Rolls by the Secretary of the Interior. It may be said, and no doubt was the opinion of these three witnesses for the Defendants, that Winton's advice to his clients interfered with their ideas as to how the work of identification should be conducted. The same statement can be made as to an attorney in the trial of a case, before this or any other court. No doubt counsel for the Defendants is of the opinion that the action of counsel for the Plaintiffs in the present case in moving to amend findings of fact, moving for a new trial, or taking any other step in the interests of his clients which causes work on the part of the Court, or on the part of counsel for the Defendants, is an interference with the trial of the case. Nevertheless counsel for the Plaintiffs is doing what he conscientiously believed to be his duty, and if Winton, in Mississippi, in advising the Indians as he did, was doing what he conscientiously believed to be his duty and for the best interests of his clients, the Mississippi Choctaws, the findings of fact should not contain a criticism of that action based on an opinion of a witness uninformed as to Winton's work among and for the Indians.

When Winton was advising the Mississippi Choctaws that it was not necessary for them to appear a second time

before the Dawes Commission for identification, he was standing on the full blood rule of evidence as was the Dawes Commission, which rule of evidence that Commission recognized in its report of March 10, 1899, and confirmed by the Interior Department August 10, 1899, but which was subsequently *disregarded and reversed by the Dawes Commission* in its report of May 19, 1902, R. 2881, where that Commission found that only Josephine Hussey, *et al* (seven Indians), were entitled to identification as Mississippi Choctaws. This fact alone should justify Winton in so advising the Indians, for it would have done them no good whatever to have appeared a second time before the Commission for identification. Eighteen hundred of the Indians whose names were on the schedule of March 10, 1899, did appear a second time for identification by the Dawes Commission, and their applications were refused and the Commission continued to refuse the applications of all Mississippi Choctaws for identification until the passage of the Act of July 1, 1902, which act re-established and put in force the full blood rule of evidence.

Winton's advice, therefore, was sound, as the evidence taken was uniformly used against these identified Mississippi Choctaws, all of whom were rejected on this evidence taken at the second hearings.

Further amend finding twenty-seven by striking out the last eleven words—*"telling them that the Commission had no authority to enroll them"*—**for the reason that not one witness has testified in support of such fact.** This clause is *verbatim* with a clause of the eighth finding of fact requested by the Defendants, p. 11, Defendants' Original Brief, and an examination of the twelve pages, R. 33, 34, 35, 36, 420, 436, 467, 468, 491, 492, 2496, 2497 cited by the Attorney for the Defendants in support thereof will show that no witness testified that Winton was *"telling*

them that the Commission had no authority to enroll them." This same statement was made in Plaintiffs' former motion to amend the findings. R. Vol. 10, p. 53-4, and in the brief filed in reply thereto in behalf of the Defendants, the correctness of such statement was not denied, no reference having been made to it whatever.

FINDING 28.

Amend finding twenty-eight by adding thereto words as follows:

> and have been filed in Court as evidence of authority and employment to represent the Mississippi Choctaws, and for no other purpose. R. Vol. 1, p. 25.

FINDING 29.

Amend finding twenty-nine, paragraph 1, line 5, by inserting after the word *"agreement,"* words as follows:

> *after being amended in Congress as hereinafter set out.*

From this paragraph as now drawn it would appear that said agreement was approved by act of Congress without any amendment, that is, that it was approved as transmitted to Congress by the Secretary of the Interior, which, as this finding later shows, is not a fact.

Further amend finding twenty-nine by striking therefrom the last eight words, and insert in lieu thereof words as follows:

> in the way of a compromise settlement of, and to end the long and somewhat furious contest which demanded a larger recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Na-

tion, thus granting substantially the amendments contended for by attorneys for the Mississippi Choctaws and as prayed for by them in said memorial to the House and Senate of April 24, 1902, that the full bloods should be admitted and given time after identification within which to remove to the Choctaw Country West.

In support of the last amendment above, the Court's attention is invited to the fact that numerous parties well acquainted with the efforts of Owen and Winton to secure legislative relief for the Mississippi Choctaws have stated that the amendment of Sections 41 and 42 of said agreement and the passage of said agreement *as amended* was in the nature of *a compromise* of the fight then being waged and which had been waged for several years in behalf of the Mississippi Choctaws. The evidence relied on to support the facts stated in said amendment is as follows:

COMMISSIONER W. A. JONES, in referring to the passage of the Act of 1902, said:

> "I think, however, that all were satisfied that the compromise secured in the Act of 1902 was better than nothing." R. 2984, Q. 12.

WILLIAM H. MURRAY, a Member of Congress from Oklahoma, on January 8, 1915, in a statement before the Committee on Indian Affairs, stated that the amendment and passage of the act of July 1, 1902, was *"a necessary compromise."* Part 2, p. 108, of the hearings on H. R. 20150.

THE GOVERNOR OF THE CHICKASAW NATION, Hon. D. H. Johnson, is also on record before the Senate Committee on Indian Affairs, that the agreement and passage of the Act of July 1, 1902, *"was a com-*

promise settlement." Said hearing on H. R. 20150, Part 2, p. 108.

MR. McMURRAY, former attorney for the Choctaw Nation, mentioned in the last paragraph of finding twenty-nine, and who represented the Choctaw Nation in this "long and somewhat furious contest" to obtain the rights of the Mississippi Choctaws, is also on record before said Senate Committee on Indian Affairs as stating that *the agreement and passage* of the Act of 1902 was *"a compromise measure"* and *"that it was accepted by the friends of the Mississippi Choctaws as a compromise* of this controversy, and as a final settlement of the claims of the Mississippi Choctaws, * * * the Harris Amendment not having been pressed after the compromise was entered into." * * * The fight, at that time, to enroll Mississippi Choctaws, was "at a white heat," and **"I had become convinced that a compromise was necessary to a final settlement."** Said hearings, Part 2, p. 106.

MR. McMURRAY also stated that in accordance with a request made by Mr. James S. Sherman, Chairman of the Indian Committee of the House, he prepared an item giving the full bloods in Mississippi another chance to go West and take lands in the Choctaw country. Said hearings, Part 2, p. 107.

SENATOR WILLIAMS, at the time of the passage of the Act of 1902 a Member of the House, testifying in 1909, in behalf of the Defendants, on the subject of compromise, said:

> "Now, in that connection, I never did succeed to the bitter end, in getting all that I wanted in connection with the Mississippi Choctaws. I sought from the beginning to have them identified as Mississippi Choctaws, and upon that fact enrolled and to become entitled *ipso facto* to their rights as citizens of the Choc-

taw Nation, but the provisions in existing law, which required to remove to the Indian Territory all who were not then in the Indian Territory, in order to secure their rights, were agreed to by me, but agreed to by me because they were the best I could get. In other words, the Committee in Congress never would go the full length I wanted to go, and so far as the removal to the Territory was concerned, they were for me in *ad infinitum*, so far as I am concerned, and submitted to by me, and inserted by me also in various provisions, because I had to have them in order to get the other things. I am still of the opinion that they had the right to their share of the lands without removal from Mississippi, as citizens of the Choctaw Nation for consanquinity." R. 546.

MR. OWEN, when testifying in 1909, said:

"I favored the Choctaw-Chickasaw supplementary agreement, except in so far as it deprived full-blood Mississippi Choctaws of the rights granted in 1900, as I have heretofore explained." R. 2539.

and speaking further, he said:

"I was desirious of amending it as far as I could to minimize the injury which I saw it contained to my clients." R. 2572.

Speaking further as to this compromise, Mr. Owen said:

"Mr. Williams had an amendment which he intended to offer, recognizing the rights of the full-blood Mississippi Choctaws, along the lines of my memorial. Mr. McMurray, who was representing the Choctaw-Chickasaw Nation, drew a form recognizing the full-blood rule of evidence, in such form, however, as to be quite drastic and he gave this proposed agreement to Mr. Curtis and got Mr. Curtis to offer it as a compromise to the more liberal proposal which

Mr. Williams had intended to offer. The compromise amendment introduced by Curtis was drawn by McMurray and Van Devanter, Assistant Attorney General of the Interior Department, and Mr. Williams agreed to it as the adjustment under which the full-blood Mississippi Choctaws would have a chance to be allotted." R. 2596.

FINDING 30.

Amend finding thirty by striking therefrom the first paragraph, and insert a paragraph as follows:

> The passage of the Act of July 1, 1902, as submitted by the Secretary of the Interior to Congress, was actively opposed by Owen and Winton, Attorneys for the Mississippi Choctaws, and the amendment of Sections 41 and 42 thereof were made as the result of the long contest from 1896 to July 1, 1902, inclusive, waged by Owen, Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation.

The amendments made in Congress to Sections 41 and 42 of said supplemental agreement were in accordance with the provisions proposed in the Harris Amendment, and as prayed for in the Winton Memorial addressed to the House and Senate on April 24, 1902, to the extent of adopting the full blood rule of evidence, allowing further time for applications and granting further time in which to remove after actual identification. Ex. 1, R. L. O., Dep. 281.

The supplemental agreement was transmitted to Congress by Secretary Hitchcock in a letter under date of March 26, 1902, in which he said:

> "I very earnestly recommend that the agreement be ratified in its present form."

This agreement, together with the Secretary's letter, was presented to Congress March 27, 1902, and referred to the Committees on Indian Affairs of the House and Senate, and was reported from the Committees to the Senate and House respectively, and not considered and amended until June 18, 1902, becoming a law July 1, 1902.

Within less than thirty days after the Secretary transmitted the supplemental agreement to the two Houses of Congress, the Winton Memorial protesting against the enactment of said agreement into law without certain amendments was prepared and presented to the Senate on April 24, 1902, and referred to the Committee on Indian Affairs to accompany the Harris Amendment to Senate Bill 4848, which was the same as House Bill 13172.

It will thus be seen that Owen, Winton and associates, representing the Mississippi Choctaws, very promptly objected to the enactment of the supplemental agreement *without changes*, and in said memorial, presented arguments why changes more favorable to the Mississippi Choctaws should be made, and as far as the Government records show, were the only attorneys presenting and making arguments in favor of recognizing the rights of the Mississippi Choctaws at this time, R. 3815, X.-Q. 24-27, and there is no doubt whatever that the changes made in said supplemental agreement favorable to the rights of the Mississippi Choctaws were made as the result of the labor and arguments before the two committees and the presentation of their case to the House and Senate by Owen, Winton and associates.

The changes in said supplemental agreement were made certainly as the result of the labor of some one in behalf of the Mississippi Choctaws, for if there had been no opposition to the Mississippi Choctaws on the part of the Dawes Commission, the representative of the Choctaw

Nation and the officers of the Interior Department handling Indian affairs, the supplemental agreement would undoubtedly have contained a provision recognizing their rights, when it was framed and transmitted to Congress by the Secretary of the Interior on March 26, 1902, but the agreement as framed by these parties and transmitted to Congress by the Secretary, contained a provision providing for the recognition of the Mississippi Choctaws that would have barred them, all except "Josephine Hussey *et al*," R. 2880. The procedure adopted in the consideration of the Committees, and the reporting of the bill without formal amendment favorable to the Mississippi Choctaws, left only one course open to the attorneys, Owen and Winton, representing those Indians, and that was to appeal directly to Congress, which was done through the Harris Amendment and the memorial of April 24, 1902.

It was agreed in Committee that the full blood rule of evidence amendment should be adopted on the floor and Chairman Sherman instructed McMurray, the Choctaw attorney, to prepare it, which he did, and Curtis offered it and it was accepted by Owen and Winton and the other friends of the Mississippi Choctaws as a compromise. See Finding 29, *supra*, pages 129-133.

The first paragraph of finding thirty to which objection is here made, states that the amendments to Section 41 of the agreement were not adopted as a consequence of the memorial of April 24, 1902.

With all due respect to the Court and to counsel representing the Government and the Indians, it is submitted that there is not one word of evidence, documentary or otherwise, in this record which will support such a negative statement of fact and the attorney for the Defendants is now and here called upon to point out such evidence if it is in the record. Statement was made to this effect in the

brief filed herein in support of Plaintiffs' motion to amend the tentative findings of fact filed December 7, 1914, and at that time counsel for the Defendants was challenged to point out such evidence in his brief replying to Plaintiffs' motion to amend said findings. The attorney for the Defendants filed a reply brief, consisting of sixty-seven printed pages, and failed absolutely to point out any evidence in support of the facts stated in this paragraph of finding 30. Not only was there a failure to point out any evidence supporting the facts stated in this paragraph as challenged to do by counsel for Plaintiffs, but he made no objection whatever to the amendment proposed by Plaintiffs, to strike out said paragraph and to insert in lieu thereof a paragraph as follows:

> The Choctaw-Chickasaw Agreement, ratified July 1, 1902 (32 Stat., L. 641), as first submitted to Congress, was amended (1) as to recognize the full-blood rule of evidence; (2) to give six months after identification within which the Mississippi Choctaws might remove, and (3) to give six months after the ratification of the agreement within which the Mississippi Choctaws might make application for identification, and the amendment in these three particulars was due to the urgent demand and active work of the Plaintiff Owen and associates. R. Vol. 10, pp. 60-1-3.

Neither was there any objection made to the amendments proposed at that time by the Plaintiffs to Finding thirty, as set out on pages 63 and 4 of said motion, R. Vol. 10. On the matter of preparing brief and requests for findings of fact, the rules of the Court provide as follows:

> If the Defendants' brief contains statements of fact which the claimant controverts, he must file a reply brief; otherwise it will be assumed that he concedes the facts stated. Rule 87.

Where Claimants' requested findings are not agreed to, the Defendants will point out specifically their objection to each finding and suggest any changes therein they may desire. Rule 87.

The Attorney for the Defendants not having objected to the Plaintiffs' motion to amend the findings of fact, in this particular, the Attorney for the Plaintiffs considered it as a matter of course that in the trial of the case it would "be assumed that he concedes the facts stated" in the Plaintiffs' proposed amendment in this particular, and for that reason this proposed amendment was not even mentioned or referred to in the Plaintiffs' Reply Brief and of course not as fully discussed when the Plaintiffs' motion was argued as it otherwise would have been had Defendants objected to said amendments.

It is further contended, and fully believed, that the record does not in any way, whatever, establish the facts stated in said first paragraph of finding thirty and that an examination of articles 41 and 42 of the agreement as transmitted to Congress by the Secretary, and with reference to which he in his letter of transmittal says—*"I very earnestly recommend that the agreement be ratified in its present form"*—and an examination of the legislation prayed for in the Winton-Owen Memorial of April 24, 1902, and the Harris amendment introduced at the instance of Owen, as stated in finding 29, p. 15, 2d paragraph, will show that the amendments made in Congress to the legislation as proposed by the Secretary of the Interior recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and had it not been for these amendments and the arguments in support thereof by Owen and his associates no recognition whatever would have been given to, nor land allotted, the Mississippi Choctaws.

In considering this question, it should be borne in mind

that the Owen-Winton Memorial of April 24, 1902, presented to the Senate by Senator Harris in support of the Harris Amendment, *contains the only written argument* made to Congress in support of such amendment. It should also be borne in mind when considering this question as hereinbefore set out, that Owen was in favor of the passage of the supplemental agreement if such amendments were made as hereinbefore set out.

Reviewing the legislation as proposed by the Secretary of the Interior, the legislation prayed for in the said Winton-Owen Memorial of April 24, 1902, and the Harris Amendment, and the legislation as actually enacted by Congress, it is found that Section 41 *as originally drawn and submitted* to Congress by the Secretary, provided that the Mississippi Choctaws

> "may at any time within *six months after the date of final ratification* of this agreement, make bona fide settlement within the Choctaw-Chickasaw country."

The legislation prayed for in said Memorial of April 24, 1902, by Owen and Winton for the Mississippi Choctaws was that the Mississippi Choctaws should be given

> *"twelve months after final notification of their identification to remove west"* and make bona fide settlement in the Choctaw-Chickasaw country.

The legislation as enacted gave them *"six months* (instead of twelve, as prayed for) after the date of their identification as Mississippi Choctaws by said Commission to remove west and make bona fide settlement in the Choctaw-Chickasaw country."

The proposed legislation *as submitted* to Congress by the Secretary, provided that "the application of no person for

identification as a Mississippi Choctaw shall be received by said Commission *after the date of the final ratification of* this agreement," which was September 25, 1902.

The legislation prayed for in said memorial of April 24, 1902, by Owen and Winton, attorneys for the Mississippi Choctaws, on this question, was that Congress recognize the schedule of March 10, 1899, and that they be permitted to apply the same as other Choctaws as long as the rolls were open.

The legislation as enacted allowed the Mississippi Choctaws *six months subsequent to the date of the final ratification to apply for identification*, which *extended the time* for the taking of proof to complete the identification indefinitely, and in some cases, for years, *or until the closing of the rolls* on March 3, 1907, the only limit being placed upon the time within which application for identification could be made.

The proposed legislation submitted to Congress by the Secretary *did not provide* for the adoption of the full-blood rule of evidence.

The said memorial of April 24, 1902, submitted by Owen and Winton, Attorneys for the Mississippi Choctaws, *prayed for the adoption of the full-blood rule of evidence*, as set out in the Harris Amendment introduced at the instance of said Owen.

The legislation as enacted by Congress *adopted* in the latter part of Section 41, the *full-blood rule of evidence* as prayed for in said memorial of April 24, 1902, by the attorneys for the Mississippi Choctaws.

The Owen memorial of April 24, 1902, also prayed for a further recognition of the rights of the Mississippi Choctaws than that granted by the legislation as enacted July 1, 1902, in this, that of providing for the recognition and enrollment of the children and grandchildren of full bloods.

This recognition by Congress at this time was not granted, but Owen and Winton continued their labors in behalf of the Mississippi Choctaws in this particular, and Congress did, by the Act of April 26, 1906, 34 Stat., 137, 145, provide for such recognition as set out in finding 31, p. 16, and the Act of June 21, 1906, 34 Stat., 341, as follows, to wit:

> *"No distinction* shall be made *in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes,* and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

The fact that Owen and Winton labored for a greater recognition of the rights of the Mississippi Choctaws than was granted in the Act of July 1, 1902, and the further fact that they continued to labor for a greater recognition of the rights of the Mississippi Choctaws for citizenship in the Choctaw Nation after the passage of that Act, does not prove that Owen and Winton were opposed to the partial recognition of those rights by the Act of July 1, 1902. Owen and Winton could have consistently been opposed to the agreement as originally transmitted by the Secretary and at the same time be in favor of and accept as favorable the partial recognition which was accorded the Mississippi Choctaws by the Act of July 1, 1902, although that recognition did not go as far as Owen and Winton wanted Congress to go, for the reason that the partial recognition granted by said amendments was in accordance with their contention. Owen wanted a larger recognition, and must be considered as favoring the recognition which was granted by the Act of July 1, 1902, as he testified he did do.

MR. WILLIAMS in his deposition testifies that

"Had it not been for Owen, I probably never would have set about it"—

that is, laboring to obtain rights for the Mississippi Choctaws to citizenship in the Choctaw Nation. R. 553.

JOHN H. STEPHENS, then a member, and now Chairman of the House Committee on Indian Affairs, says that Mr. Owen

> "has been untiring in his efforts to secure the recognition of the Mississippi Choctaws, and to secure their proper enrollment. His continued attention to this matter has, in my judgment, been *of great value to the Mississippi Choctaws*, as he has been unceasing in his efforts to secure their recognition." (Italics mine. W. W. S.)

CONGRESSMAN LITTLE, of Arkansas, has said that Mr. Owen

> "on various occasions presented strong and forcible arguments in their behalf, and has also appeared before the committees having this subject in charge in their interest;"

and that Mr. Owen's "services in connection with this legislation have been faithful and efficient." R. 318.

HON. JAMES K. JONES, then a member of the Senate Committee on Indian Affairs, has testified that the Mississippi Choctaws would not have had any recognition had it not been for the untiring efforts of Mr. Owen in their behalf. R. 317.

In support of Plaintiffs' motion to strike out the first paragraph of finding thirty, the Court's attention is invited to what has hereinbefore been said with reference to Plaintiffs' motion to amend the tentative findings of fact filed December 7, 1914. R. Vol. 10, pp. 60-63.

When testifying Mr. Owen was asked the following questions:

"X Question. In addition to the confirmation of what is known as the McKennon Roll, did you appear and urge at any time a provision such as was incorporated in the bill taking care of the full-blood Mississippi Choctaws?"

"Answer. The memorial which we filed April 24, 1902, and which was printed as a Senate Document, shows that *we demanded the full-blood rule of evidence*—that we demanded time within which to remove *after identification* and that we *demanded recognition of the schedule of March 10, 1899*. We did not get all we asked for. Senator Harris introduced a bill which I drew as a proposed amendment to Senate 4848, which was the Choctaw-Chickasaw agreement, making the proposals for the amendments we desired, but not going so far as to regard the removal clause. We had abandoned that latter contention unless we could get into the courts." R. 2615.

"X Question. Did the associates of Charles F. Winton in 1902, and do they now, claim credit for the legislation enacted by Congress which resulted in the preparation, or under which the McKennon Roll was prepared?"

"Answer. The act of 1902 has nothing to do with the McKennon Roll of March 10, 1899."

"X Question. But I ask you if in 1902 they then claimed credit for the legislation theretofore enacted, or under which the McKennon Roll had been prepared?"

"Answer. In 1902 Winton and his associates claimed the credit for passing the act of 1897, of 1898, the so-called Curtis Act, requiring the identification of the Mississippi Choctaws, and preventing the Mississippi Choctaws from being barred by non-residence.

"They claimed credit for having passed an act approved May 31, 1900, which was passed in the very

identical words of the memorial submitted by Winton and his associates.

"They claimed the credit for defeating the Choctaw-Chickasaw agreement of February 7, 1901, which would have barred the Mississippi Choctaws.

"They claimed the credit for the amendments obtained in the agreement ratified July 1, 1902, by Congress, in that such agreement was modified to establish *the full-blood rule of evidence* demanded by Winton and his associates in the memorial of April 24, 1902, in that it gave them *time after identification to remove* as demanded by the memorial of April 24, 1902, in that it *extended the time within which they might make application* as demanded by the memorial of April 24, 1902.

"These were the things which Winton and his associates accomplished, which are shown by printed records of Senate and House Documents to have been accomplished by Winton and his associates." R. 2617.

It will be noted that Mr. Owen testified that Winton and his associates claim the credit for defeating the Choctaw-Chickasaw Agreement of February 7, 1901.

They caused its defeat because had the proposed agreement of February 7, 1901, been enacted into law it would have barred the Mississippi Choctaws owing to the construction placed upon the words in the first line, *"duly identified,"* the Commission having reversed itself as to the full-blood rule of evidence by holding that Mississippi Choctaws to be *"duly identified"* must technically prove their descent from ancestors who had strictly complied with the provisions of the Treaty of 1830, which, with the exception of a half dozen, they were unable to do, Ex. 1, R. L. O., p. 37, and it must be remembered that the full-blood rule of evidence which the agreement contained as originally drawn was stricken therefrom in the Interior Department before that agreement was transmitted to Con-

gress by the Secretary. Ex. 1, R. L. O., 244, 248, 255.

That the long and furious contest waged by Mr. Owen, Winton and associates in behalf of the Mississippi Choctaws resulted in the proposed Chickasaw-Choctaw agreement being amended so as to recognize the rights of those Indians and that it no doubt was the work done before the Indian Committee of the House by them as attorneys for the Mississippi Choctaws is evidenced by the fact that said amendments had been considered in committee and agreed to and were in reality committee amendments as shown by the remarks of Mr. McRae and Mr. Williams referring particularly to the provision adopting the full-blood rule of evidence. Cong. Rec. June 18, 1902, p. 7039 —Vol. 35, part 7.

It was at this time that Mr. Owen appeared before the Committee on Indians Affairs of the House, June 9, 1902, and made an argument in favor of said amendments. R. 3815, X-Q. 24-27.

FINDING 31.

Amend finding thirty-one by adding thereto the following paragraph:

Owen and Winton on behalf of the Mississippi Choctaws prepared a memorial which was submitted to Congress by Representative Stephens, March 15, 1904. Ex. R. L. O., p. 341, and in the Senate by Senator Money, Cong. Rec., 3025, March 9, 1904, in which they prayed that no distinctions against Mississippi Choctaws should be made (said Ex. 1, 342) and Congress, at the instance of Owen, R. 299, embodied in the Act approved June 21, 1906, 34 Stat., 341, a provision as follows:

> "No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identi-

fied by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

Further amend finding 31 by adding thereto a second paragraph as follows:

> From 1896, when Owen and Winton first became interested in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and arguments both oral and written in support thereof, to Congress, the committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission and the officials and representatives of the Choctaw Nation, and during said period Owen was recognized by the committees of Congress, Members of Congress and other officials of the Government, as the Attorney for the Mississippi Choctaws, and as said attorney faithfully, persistently, forcefully and successfully represented said Mississippi Choctaws before Congress, the committees of Congress, and the officials of the United States and the Choctaw Nation, and had it not been for the labor of said Owen in their behalf, the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation would not have been, as it was, recognized by Congress. R. 315, 316, 317, 318, 319, 410-11, 413-15, 416, 553, 2527, 2573.

The facts stated in the above paragraph are supported by statements of such men as Senator John Sharp Williams, R. 535, 542, 548, 552-6.

Senator James K. Jones, R. 317, 413-415.

Senator H. D. Money, R. 318.

Hon. John A. Little, Congressman from Mississippi, R. 318.

Hon. John H. Stephens, Congressman from Texas, R. 318, 1115-16.

Vice-President J. S. Sherman, R. 317.

Hon. Thomas P. Smith, formerly Acting Commissioner of Indian Affairs, R. 315.

Hon. Preston C. West, then an attorney at law in Oklahoma but now the Assistant Attorney General for the Department of the Interior, R. 315-16, 381-8.

In fact, all of the evidence in the case, including the testimony of officials of the Government and of the Choctaw Nation, and the interveners, is to the effect that during all this time—1896-1906—Owen represented the Mississippi Choctaws, as above stated, in the matter of their claim to citizenship in the Choctaw Nation. It is true, as inferred by the Court's opinion, that Owen, during this period, especially the early part thereof, contended in behalf of the Mississippi Choctaws, for a larger recognition of their rights than was actually obtained, but that fact only emphasizes the extent of the labor and contentions made in behalf of the Mississippi Choctaws, and should not be used by the Court to his detriment, and certainly does not warrant the statement that he was opposed to the recognition of the rights of the Mississippi Choctaws as granted in the Act of July 1, 1902. It is true that act did not go as far as he wanted Congress to go, nor as far as Congress later did go in the two acts of 1906. 34 Stat., 140, 341.

FINDING 32.

Amend finding thirty-two by adding thereto four paragraphs as follows:

The value of the undistributed property of the Choc-

taw-Chickasaw Nation is shown by a memorial of the Choctaw General Council of the 8th of October, 1909, placing the value of the unallotted lands, the coal and asphalt lands, the undisposed of town lots and the public buildings, belonging to the Choctaw tribe of Indians, the Choctaw Capitol building, the academy and seminary buildings, the Court House and jails, undisposed of, at sixty millions of dollars and in which the Mississippi Choctaws have an undivided equal interest with all other Choctaws. See Memorial Senate Doc. 390, 61st Congress, 2d Session, p. 123.

In the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, the plaintiff Owen, during the period of several years in which he was engaged in their behalf, representing them as their attorney, protecting their rights and obtaining the recognition and legalization of their rights to citizenship in the Choctaw Nation, has expended approximately thirty-five thousand dollars in cash for which he has not been reimbursed. Neither Winton nor any of his associates have ever received any compensation whatever for any of the services rendered in behalf of the Mississippi Choctaws. R. 302-3, 2624.

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the memorials of Winton and his associates with which the Senate and House of Representatives were flooded between 1896 and 1906, the arguments before the Committees of the Senate and of the House, the arguments before the Dawes Commission, the United States Courts, the Attorney-General, and the Interior Department created a powerful sympathy in favor of the Mississippi Choctaws, caused Congress to pass numerous acts in their interest, caused the identification of the Mississippi Choctaws, and resulted in the enrollment of 1,643 persons on a separate roll under the act of July 1, 1902, as amended by the acts of April 26 and June 21, 1906, 34 Stat. L. 137, 145, 341.

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the said 1,643 Mississippi Choctaws who were admitted to citizenship in, and received allotments as members of, the Choctaw Nation, obtained the right to become such citizens and thereby receive allotments as a result of the labor and work done by Winton, Owen and associates during a period of several years prior to the passage of the acts under which they were enrolled and allotted, and that a reasonable, just and equitable compensation for such services on the principle of *quantum meruit* would be a sum equal to ——— per cent of $15,000,000.00, the total value of the estates thereby received by the said 1,643 Mississippi Choctaws, or the sum of $———. R. 302, 345-6, 352-3, 472, 2524, etc.

In support of the amendments above offered to finding thirty-two the Court's attention is invited to the brief hereinbefore filed in behalf of Robert L. Owen, where the subjects covered by said amendments are treated; pages 12 to 18, and 74 to 76, as to the value of the estate received by the Mississippi Choctaws as a result of being made citizens in the Choctaw Nation; pages 18 to 36, as to the extent of the services rendered the Mississippi Choctaws by Winton, Owen and associates, and pages 76 to 86, as to what would be an equitable or just compensation on the bases of *quantum meruit* for the services rendered by Winton and associates to the Mississippi Choctaws.

At the same time this case was argued, in October, 1913, there was being argued a case in the Court of Appeals of the District of Columbia, that of *Arnold vs. Lane, Secretary of Interior, and Lee*, No. 2513. The attorneys representing the Secretary of Interior in speaking of the jurisdictional act by virtue of which the present suit was brought, and the value of the Mississippi Choctaw property, said, at page 11 of their brief, as follows:

"Finally, we may ask, where are the Wintons, * * *, their associates or assigns—their real associates? They are the people for whose benefit this legislation was attempted. They are not here. Only the interloper Arnold is here. He seems to be everywhere. The others, the real beneficiaries of the legislation, are evidently satisfied with their lien on the $13,000,000.00 of land. They are pursuing their proper remedy. They are not coming into a foreign Court, which has not original legislation, to determine the merits of their claims."

HON. P. J. HURLEY is attorney for the Choctaw Nation, and during the last session of Congress appeared before the sub-committee of the Committee on Indian Affairs of the House of Representatives on the subject of enrollment in the Five Civilized Tribes. At pages 491 and 2, Mr. Hurley, relative to the value of the property or estate obtained by the Mississippi Choctaws as a result of legislation enacted in their behalf, said:

"This agreement (referring to the Choctaw-Chickasaw agreement of 1902) held the rolls of citizenship of the Choctaw and Chickasaw Nations open to Mississippi Choctaws after they had been closed to all other applicants. It established a rule of evidence in favor of the full-blood Mississippi Choctaws and 1,643 Mississippi Choctaws were, under this legislation, granted enrollment in the Choctaw Nation as a gratuity and not as a matter of right. *The property given to these 1,643 Indians is valued at not less than fifteen million dollars.* It is the price that the Choctaw and Chickasaw Indians of Oklahoma paid for a settlement of the Mississippi Choctaw question in 1902."

While the above may not be, strictly speaking, admissible under the rules of evidence as evidence to establish the value of the estate or property obtained by the Mississippi Choc-

taws as a result of this legislation, it is, however, permissible to refer to that statement as an admission made by the representative of the Choctaw Nation on the question of the value of the property obtained by the Mississippi Choctaws as a result of the legislation in question.

The four paragraphs above proposed as an amendment to finding thirty-two are the same as four paragraphs Plaintiffs proposed as amendments to finding thirty-two of the tentative findings filed December 7, 1914, *and to which no objection was made by the Defendants* in their "Objection to Plaintiffs' Request for Amendment of the Findings." These paragraphs treat of the value of the estate obtained by the Mississippi Choctaws as a result of being recognized as citizens of the Choctaw Nation; the amount of money expended by Owen, Winton and associates in their effort to obtain the legislation resulting in the recognition of the Mississippi Choctaws' right to citizenship in the Choctaw Nation and the value of the services rendered by Winton, Owen and associates.

In view of the remarks of the Court in the last paragraph of the opinion, p. 67, the attorney for the Plaintiffs would feel some embarrassment in discussing the subject of compensation, were it not for the fact that his duty to his clients demands that that subject be discussed but, and with the greatest respect for your Honorable Court, he is constrained to say that in doing so he feels that he has no apology to offer for the contentions made in this case as to what is or should be allowed by the Court "on the basis of the principle of *quantum meruit*" as reasonable compensation for the services rendered to the Mississippi Choctaws by Plaintiffs, and is willing to be governed, and accept the Court's criticism, the same as though he drew the petition herein and was the senior counsel in this case at the time all the evidence in question was taken and said contentions

made, knowing, as he does know, that similar contentions have been made in almost, if not quite, similar cases, not only in your Honorable Court and the Supreme Court of the United States but before Congress, the guardian of the Indians, as well, and so far as the record shows the contentions of the attorneys in such similar cases met with approval rather than criticism for judgment was rendered in their favor.

It is well known among the legal profession and the courts, that the courts are not bound to render judgment for the full amount claimed in a case, and it is equally well known that attorneys almost universally are very careful, and, in fact, should be, to claim or demand judgment for an amount large enough to cover that for which the proof in the case warrants.

It is also well known to the legal profession and the courts, and your Honorable Court has more than once so held, that judgment would not be given for more than the amount claimed, notwithstanding the fact that the proof warranted judgment for a much larger sum.

A review of the cases in which this Court and the Supreme Court of the United States, as well as Congress and Government officials, have fixed or approved the amount of compensation to be paid attorneys for services rendered Indians or Indian tribes, it is here contended, justifies the claim or demand being fixed by Plaintiffs at a sum equal to 15 per cent of the value of the property or estate obtained by the Mississippi Choctaws as a result of the legislation in question.

In the case of the Ottawa and Chippewa Indians against the United States, 42d Ct. Clms., 240, 518, the Jurisdictional Act authorized the Court to fix the compensation to be paid the attorneys for said Indians, and in that case the

Court fixed the compensation at a *sum equal to 15 per cent of the recovery.*

In the case of the Colville Indians, 43d Ct. Clms., 497, a short uninvolved case, decided May 25, 1908, this Court entered judgment for a *sum equal to 4 per cent of the recovery.* In the Maish-Gordon contract with the Colville Indians, the compensation was fixed at 15 per cent, which was reduced by the Commissioner of Indian Affairs to 10 per cent when he approved said contract.

In the case of the Ute Indians against the United States, decided February 13, 1911, 46 Ct. Clms., 225, your Honorable Court allowed *a fee of 6 per cent.* In this case the principal services were rendered before Committees in Congress. The whole case was tried upon the record, which was made up of official reports and public documents.

In the case of the Sisseton and Wahpeton Indians against the United States, decided May 13, 1907, 42 Ct. Clms., 416, a case not to be compared in difficulty with the Mississippi Choctaw case, your Honorable Court allowed *a sum equal to 12 per cent of the amount of recovery.*

In the Eastern Cherokee case, No. 23212, the Court awarded the attorneys on May 26, 1906, *a sum equal to 10 per cent of the amount of recovery.* 45 Ct. Clms. 10, 136-7.

The Eastern Cherokee case was brought before Congress in 1900. It was not as difficult a case as the Mississippi Choctaw case. The case was based upon the Treaty of 1835, and *in addition to the fee of 15 per cent,* the Secretary of the Interior allowed a fee of $150,000 to the Attorney for the Cherokee Nation, for services rendered in said case to the Eastern Cherokees, *making a total of 18 per cent,* and such men as the Hon. Francis M. Cockrell, United States Senator from Missouri, and many other men

of high standing, testified that 15 per cent in the Eastern Cherokee case was an equitable and just compensation.

In the case of the Old Settlers Cherokees, decided by the Supreme Court of the United States in 1892, *a fee equal to 35 per cent* was allowed by Congress. The Old Settlers case was based upon the treaty of 1846. The Old Settlers contracted with their attorneys, Bryan, Wilson and Hendricks, fixing the compensation at 35 per cent, and this contract was recognized by Congress when appropriation was made to pay the attorneys. The services rendered by the attorneys in behalf of the Old Settlers (Western Cherokees) were before the Court of Claims, the Supreme Court, and also involved labor before the Committees in Congress, before they had a right to be heard in the courts. The Western Cherokee Council repeatedly authorized the payment of 35 per cent and that amount was finally and actually paid. 28 Stat. L., 451.

Congress, on August 15, 1894, 28 Stat. L., p. 1010, appropriated $10,000 out of the 35 per cent to John T. Heard, in language as follows:

> "The sum of Ten Thousand Dollars, or such part thereof, if any, as shall remain of the *thirty-five per centum set apart by resolution of various councils of said 'Old Settlers' or Western Cherokee Indians*, for the expense of the prosecution of said claim, after the ascertainment and determination of the amount of such fees and charges and other claims as are properly chargeable against the said thirty-five per centum; Provided, that the Secretary of the Interior shall first determine that the said professional services were rendered to said 'Old Settlers' or Western Cherokees, and were contracted for in good faith, by persons authorized to represent said Indians."

This matter was again before Congress, and on June 10, 1896, the Secretary of the Interior was directed to with-

hold any further distribution of the 35 per centum of said estate to said attorneys, in the following language:

> "That the Secretary of the Interior be, and he is hereby, directed to withhold any further distribution and payment out of the money derived from *thirty-five per centum* of the judgment in favor of the Old Settler or Western Cherokee Indians against the United States, in the sum of Eight Hundred Thousand, Three Hundred Eighty-six Dollars, and thirty-one cents, *set apart for the payment of expenses and for legal services justly and equitably payable* on account of the prosecution of said claim, until otherwise authorized by law." 29 Stat., L. 344.

On June 7, 1897, 30 Stat. L., 88, the remainder of the 35 per centum reserved for payment of legal services rendered and expenses incurred, was distributed by Congress, *thus recognizing by a series of Statutes that 35 per centum was a fair compensation in the Old Settlers case.*

In the case of the Cherokee Nation against the United States, otherwise known as the Net Proceeds case, decided by the Supreme Court of the United States November 15, 1896, 119 U. S., p. 1, Congress allowed as compensation, *a fee equal to fifty per cent* to be paid by the authorities of the Choctaw Nation, and the fee as paid in the Net Proceeds case amounted to **$1,413,894.31.**

On this question see the Original Brief filed herein in behalf of Robert L. Owen, R. printed pages 78-84.

Two attorneys, members of the bar of your Honorable Court, have testified on this question. They are Messrs. Harry Peyton and Benjamin Carter, both of whom are well, and, no doubt, favorably known to each member of the Court. After examining a statement of fact setting up the services rendered by Owen, Winton and associates, and taking into consideration the value of the property

obtained by the Mississippi Choctaws as the result of said services, they testified that a sum equal to 25 per cent and 20 per cent, respectively, would be fair and reasonable compensation in this case to the attorneys who represented the Mississippi Choctaws. R. *2626-37, 2642-3.*

MR. OWEN, on this question, testified as follows:

> **"Winton and his associates seek in this proceeding nothing more than was contemplated by the Jurisdictional Act, that they should be awarded a reasonable fee for services performed on the basis of quantum meruit." R. 2534.**

A matter to which it is proper to invite the Court's attention, not for the purpose of fixing the compensation to be allowed by the Court on the basis of *quantum meruit*, but for the sole purpose of showing that the amount of compensation fixed in the original contracts with the Mississippi Choctaws was not done in a clandestine way, but to show that Winton and associates had nothing to conceal about the execution of said contracts, is the fact that the contracts entered into by guardians of minors with Winton were *submitted to, and approved by, the Judges of the Courts in Mississippi appointing the guardians*, as is shown by the deposition of Thomas B. Sullivan, when he was being cross-examined by Messrs. Anderson and Hill, representing the Defendants as follows:

> "35. Cross-interrogatory. Could these full bloods speak the English language?"
>
> "Answer. A great many of them could; the most of them could; they didn't speak it well, but they spoke it."
>
> "36. Cross-interrogatory. Could they read and write?"
>
> "Answer. A few of them could; not many, very few."

"37. Cross-interrogatory. In dealing with them you would have to employ an interpreter?"

"Answer. In some cases we had to have an interpreter, but that wasn't many."

"38. Cross-interrogatory. Did you read over these contracts to the Indians when they signed them?"

"Answer. Yes, sir."

"39. Cross-interrogatory. And you explained it to them first?"

"Answer. Yes, sir; we were instructed to do that."

"40. Cross-interrogatory. Now, did you afterwards make any contracts with the guardians that you had appointed for the minor children?"

"Answer. I made none, except those contracts as before referred to, in which they were to get one-half; some of those I did; most of the guardians I did."

"41. Cross-interrogatory. Were those contracts approved by the courts that appointed the guardians?"

"Answer. Yes, sir."

"45. Cross-interrogatory. You say all these contracts were approved by the judge of the court where the appointment was made?"

"Answer. Where a guardian was appointed for wards."

"46. Cross-interrogatory. And you are sure that the chancery judge approved these contracts?"

"Answer. Yes, sir; I feel pretty sure of that." R. 141.

MR. WILLIAMS, on the question of compensation, testified that he knew when Robert L. Owen presented to him the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation he, Mr. Owen, was an attorney at law, and said:

"I presumed he was not doing his work for nothing. I thought he was going to be paid." R. 542.

On the question of compensation, the Court should bear in mind and take into consideration that the services rendered by Winton, Owen and associates not only resulted in obtaining legislation recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation but also that laborious services were required and rendered from the time that this "long and somewhat furious contest" started in 1896, until the passage of the Act of July 1, 1902, to prevent legislation harmful and injurious to the Mississippi Choctaws which was earnestly recommended by the Dawes Commission, the officials of the Interior Department, and the Representative of the Choctaw Nation for passage to Congress, the Secretary of the Interior going so far as to close his letter of transmittal with an urgent appeal to Congress that the proposed legislation transmitted be enacted in its present form, making the appeal in language as follows:

> "I very earnestly recommend that the agreement be ratified in its present form." H. Doc. 512, 57th Cong., 1st Sess.

And had that proposed legislation been enacted as earnestly recommended by the Secretary of the Interior, all Mississippi Choctaws would have been barred from recognition as citizens of the Choctaw Nation.

When this "long and somewhat furious contest" began in 1896, the Mississippi Choctaws, according to the ruling of the Dawes Commission, later made, however, had no property rights in the Choctaw Nation. Those Indians had no tangible property, and it seemed to be the business of not only the representatives of the Choctaw Nation, but the Dawes Commission and the officials of the Interior Department, charged under the law with protecting the rights of the Indians and conserving their property, to prevent

this class of poor and ignorant Indians from obtaining any rights either to citizenship or property in the Choctaw Nation. The fact that these officials of the Government, charged with the duty of protecting and conserving the rights and property of the Indians, permitted the Mississippi Choctaws to remain in Mississippi unrecognized as citizens of the Choctaw Nation for almost three generations should be considered proof sufficient that those poor and ignorant Indians needed the services of an attorney, and one not connected with any of the Departments of the Government, nor with, or in the employ of, the Choctaw Nation.

MR. WILLIAMS has testified that he told some of the Mississippi Choctaws that they did not need the services of an attorney, yet, almost in the same breath, he admits that he, a man of wide legislative experience and a *practicing Attorney in the State of Mississippi, and in the district where the bulk of these Indians resided,* absolutely knew nothing and was in total ignorance of their rights under the Dancing Rabbit Creek Treaty of September 27, 1830, until—using his language—"Robert L. Owen, an attorney at law," presented the matter to him in an oral argument and at his request prepared and submitted to him a brief on the question.

Which statement of Mr. Williams should be given the most weight by the Court?

The statement that these Indians did not need the services of an attorney, or the statement that he himself was convinced of their treaty rights by an attorney, thereby showing and admitting that these very Indians, *his constituents,* were in dire need of an attorney acquainted with Indian treaties and Indian laws, and he found such an attorney when Robert L. Owen came to him and presented the

claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.

Not only is Mr. Williams on record when testifying that he was in absolute ignorance of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, but the Attorney for the Defendants corroborates Mr. Williams' statement by producing and introducing in evidence two letters written by Mr. Williams—the first written February 11, 1896, by Mr. Williams to the Commissioner of Indian Affairs, wherein *he states that he knows nothing about the treaty rights of the Mississippi Choctaws living in his district.* R. 2939.

The Commissioner of Indian Affairs answered Mr. Williams on February 17, 1896, using in part, language as follows:

> "I have to say that the lands owned and occupied by the Choctaw and Chickasaw Nations in the Indian Territory are secured by treaty to said nations in proportion of three-fourths to the former and one-fourth to the latter. No person not a recognized citizen of the Choctaw Nation would be entitled to receive any benefits from the common property of that nation.
>
> "I deem it expedient to add that applicants for admission to citizenship in the Choctaw Nation cannot be recognized as having any rights in that nation until they shall have been lawfully admitted to such citizenship; and, further, should they enter the nation for the purpose of locating there and make improvements therein they would do so at their own risk and be liable, upon complaint, to removal as intruders in the Indian country." R. 2940.

The second letter of Mr. Williams was addressed to the Commissioner of Indian Affairs under date of November 10, 1896, wherein he refers to the fact that there seems

to have been an idea gone out among the Indians that they were entitled to allotments of land and patents in the Choctaw Nation, and then he says:

> "I remember no law of either old or recent passage justifying the notion. Please write me authoritatively on the subject." R. 2948-a.

The Commissioner replied to Mr. Williams under date of November 14, 1896, and advised him that Congress on June 10, 1896, passed an act authorizing the Dawes Commission to hear and determine applications of all persons applying for citizenship in any of the Five Civilized Tribes, and after such hearing, to determine the right of such applicant to be admitted to citizenship and enrolled. The applications were to be filed within three months after the passage of the act, 29 Stat. L., 339. The three months expired on September 10, 1896—*more than two months before the date of Mr. Williams' letter of inquiry.*

No encouragement whatever did the Indian Commissioner give Mr. Williams and certainly no information of value to the Mississippi Choctaws. He suggests in his first letter the arrest and removal, as intruders, of Mississippi Choctaws daring to locate in the Choctaw country before being identified, and in his second letter, that the time had expired when they might apply to the Dawes Commission.

From this it will be seen that Mr. Williams was informed by the Commission that the gates were closed to all Mississippi Choctaws, and securely locked when the Dawes Commission rejected the Jack Amos case.

About this time, or shortly thereafter—that is, either in 1896 or early in 1897—according to the evidence of Mr. Williams, R. 548, Mr. Owen presented this matter to Mr. Williams and, as Mr. Williams says—convinced him, by

oral and written argument, that the Mississippi Choctaws did have rights to citizenship in the Choctaw Nation under the Treaty of 1830.

The next letter after the *conversion* of Mr. Williams to the rights of the Mississippi Choctaws, found in the Record, is dated May 31, 1898, and addressed to the Secretary of the Interior. R. 2940-2. This last letter of Mr. Williams shows that someone had informed him as to the rights of the Mississippi Choctaws, and a reading of that letter should, and it is believed, will, convince the Court that he used the same argument therein which Mr. Owen not only used with Mr. Williams, but to Congress, put in the shape of memorials, and oral arguments before Committees and Members of Congress in the performance of his duty as attorney for the Mississippi Choctaws.

But the Congressional Record shows that much more was done by others than by Mr. Williams, as Senators Walthall, Money, Jones, Stewart, Harris and Platt, and Congressmen Allen, Curtis, Sherman, Stephens, McRae, Little and others whose interests and activities in behalf of the Mississippi Choctaws were induced and obtained by Owen and Winton to introduce bills, resolutions and memorials prepared by Owen, who supported Owen's contentions in behalf of the Mississippi Choctaws, and helped create the sentiment in Congress that resulted in their final recognition, giving them rights to citizenship in the Choctaw Nation.

There is no doubt but that Mr. Williams, along the line of his duty as a Member of Congress when called on by Owen, favored and served the Mississippi Choctaws, but even as to Mr. Williams **everything Mr. Williams did in their behalf should be credited to Mr. Owen,** for, as Mr. Williams said—had it not been for Mr. Owen, he probably never would have set about it, meaning the

matter of giving his attention to having Congress recognize the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and it must be borne in mind that this statement was made by Mr. Williams in April, 1909, after all the legislation in question had been enacted and he at that time, looking backward over this "long and somewhat furious contest," was in a position to know that no one except Mr. Owen ever presented the Mississippi Choctaw matter to him.

FINDING 33.

THE ESTATE OF CHESTER HOWE.

Amend finding thirty-three by striking therefrom the 5th paragraph, and insert in lieu thereof a paragraph as follows:

> Between the months of December, 1900, and July, 1902, the said Howe was actively engaged in presenting claims of Choctaws resident in Indian Territory, and mixed-blood Indians, claiming as Mississippi Choctaws, for allottable shares of lands and moneys of the Choctaw Nation before the Interior Department, which had been rejected by the Dawes Commission. R. 1634, 1635, 1718, 1719, 1721, 1722.

In framing the findings of fact the Court in many instances gave great weight to the evidence of Mr. Williams, but in this particular instance the Court seems to have ignored what Mr. Williams said with reference to Mr. Howe, to wit, that during the period of time covered in obtaining the legislation for the relief of the Mississippi Choctaws, he never heard tell of Chester Howe. R. 552-6.

It is respectfully submitted that the facts stated by the Court in this fifth paragraph, where there is made the broad general statement that Mr. Howe was actively en-

gaged during all of this period in pressing the claims of the Mississippi Choctaws, is not in accordance with the record, but that the record does establish the fact that Mr. Howe during that time was actively engaged in presenting the claims of alleged individual Mississippi Choctaws to the Interior Department for allotment and that his activity in behalf of such alleged Mississippi Choctaws before Congress or the committees of Congress, consisted in only appearing once in the interest of such Mississippi Choctaws before the House Committee on Indian Affairs in 1902. If, as stated in this paragraph, which describes the services of Howe more fully and to a greater extent than any finding of the Court describes the services of Owen and Winton, why is it that there appears no public record bearing the name of Chester Howe as speaking in memorials for, or being heard in behalf of, the Mississippi Choctaws as a group? So far as the records of the House Committee on Indian Affairs shows, **Owen is the only man there named as having been heard in June, 1902, for the Mississippi Choctaws, when the bill which later became the Act of July 1, 1902, was being considered.**

The only memorials or petitions presented to Congress, setting forth argument in favor of the rights of the Mississippi Choctaws, bear the names of Winton and Owen, and not one Government document has been produced bearing the name of Chester Howe, nor anyone else, except Owen and Winton and their associates.

FINDING 43.
SULLIVAN AND NEILL.

Amend finding forty-three by striking therefrom all of the first paragraph after the word *"claimants"* in the fourth line, for the reason that the consideration which Winton

was to pay Sullivan and Neill is not established by the record. Winton being dead, the evidence of Sullivan and Neill cannot be used to establish a verbal contract between them and Winton, and it is here insisted that the written contract does not bear the genuine signature of Winton, as a comparison of that signature with the letters admittedly bearing the genuine signature of Winton will show. See Ex. A, Dep. Sullivan, p. 99; Ex. 3, Dep. R. L. O., filed February 24, 1913, containing three letters bearing the genuine signature of C. F. Winton.

In this connection the Court's attention is invited to the fact that neither jurisdictional act provides for the bringing of a suit by Sullivan and Neill against Winton, and the findings of fact should not be encumbered with personal claims against Winton, even if they were proven and just. If Sullivan and Neill have claims against Winton or against Winton's estate, their remedy would be by suit in a court other than the Court of Claims, and Winton's defence in that court against such a suit should not be prejudiced by a finding of fact made by this court in the present proceeding, where no such claim or suit against Winton or no defence thereto is provided for under the jurisdictional acts.

An examination of the Exhibit No. 4 will show, on pages 42-7, an account between Winton and Sullivan. The heading of said account is as follows:

"EXPENSE ACCOUNT OF CHARLES F. WINTON TO THOMAS B. SULLIVAN, NOT PAID. CARTHAGE, MISS., APRIL, 1901.
CHARLES F. WINTON IN ACCOUNT WITH THOMAS B. SULLIVAN.

Charles F. Winton, Debtor, to Filing Petitions of Guardianship, Securing Letters of Administration, Orders from Chancery Court, and other Legal Mat-

ters in the Chancery Court of Leake County, State of Mississippi, During the years 1901, 1902, 1903, Guardian Bond, etc. Dr.

No. 1491. Petition in Chancery Court for Lucy John for Letters of Administration and Court Orders, May 24 and 27, 1901.....$100."

This item certainly shows a personal charge against Winton for $100 for the services rendered as above stated, and it will be noted that the account, according to its title, covers the years 1901, 1902 and 1903. The alleged contract which the Court sets out in the third paragraph of this finding, *bears the date of May 6, 1901.*

If Winton had entered into a contract with Thomas B. Sullivan and J. H. Neill whereby he agreed to give one-fourth part of his interest in the Mississippi Choctaw cases as a consideration for the services Sullivan and Neill were to render him, why does the account book of Sullivan and Neill contain the above charge—and many similar charges—against Winton for legal services, the very services mentioned in the alleged contract of May 6, 1901?

This account between Sullivan and Neill and Winton contains thirty-eight charges of one hundred dollars each, totalling $3,800. The first service rendered, according to this account, is under date of May 27, 1901, and shows that services were rendered at various times from that date to October 2, 1901.

The book, Exhibit B, to the deposition of Thomas B. Sullivan, sets forth the expenses incurred by Mr. Sullivan in performing services or making trips for Winton during the years 1897 to 1903, containing many charges aggregating $733.50, as shown on page 31 of said book.

On page 37 of said book is a note as follows:

"List of Mississippi Choctaws which Thomas B. Sullivan and J. H. Neill assisted Charles F. Winton in getting to the Indian Territory."

The list contains *three hundred and eighty-one names*, and purports to show that these Indians were moved from Carthage and twenty other different sections of Mississippi. The evidence in the case shows that Sullivan and Neill moved not more than twenty-two Indians as stated in the fifth paragraph of the forty-third finding.

If this record is wrong in stating that Sullivan and Neill assisted Winton in moving the three hundred and eighty-one Indians, it is a false record, and was known to be false when it was made, and if either Mr. Sullivan or Mr. Neill will make a false record showing that they assisted Winton in the removal of three hundred and eighty-one Indians, it is fair to assume that the contract offered by them as the contract between themselves and Winton bears not the genuine signature of Winton, but the false, forged signature of Winton. And when the signature of Winton to said contract does not compare favorably with the genuine signature of Winton the evidence is not sufficient to prove said contract.

Winton is dead, and this alleged contract between him and Sullivan and Neill did not make its appearance in this case until some time after his death. The testimony of Sullivan and Neill as to whether or not this alleged contract bears the genuine signature of Winton is incompetent for the reason that neither of them is competent to testify as to the genuineness of this signature, they both being parties and beneficiaries of the contract in question. No one else has testified to the genuineness of the Winton signature. The contract was shown to Mr. Owen when testifying, and he absolutely refused to testify that it bore the

genuine signature of Winton and submitted three letters bearing the signature of Winton, in order that the Court might compare the signatures on those letters, with the signature on the alleged contract. R. 2532, Q. 14, 2541-51, 2604-5, 2607, 2623.

If, in the opinion of the Court, after comparing the signatures, the contract in question does not bear the genuine signature of Winton, then the amendment here proposed to finding forty-three should be adopted, and the Court should *further amend this same finding* by striking out all of the third and fourth paragraphs thereof, which pertain to the contract in question.

Further amend finding forty-three by striking out paragraphs 3 and 4 which relate to the alleged Sullivan and Neill-Winton contract, for the reasons immediately hereinbefore stated.

When claimants' said Motion of August 9, 1915, a part of which is hereinbefore set out, was argued before the Court of Claims in February, 1916, the appellants as claimants below presented and submitted to the Court in printed form "The findings of fact made by the Court on May 17, 1915, as changed by the plaintiffs' Motion to amend," which shows very clearly the amendments requested by said Motion and at their proper place in the findings of fact with citations to that part of the record where said Motion to amend contains the requests for the various amendments. The amendments proposing additions or insertions to the Court's findings of fact are printed in black letters. The said findings of fact of May 17, 1915, as changed by said Motion to amend and presented to the Court at the last trial of the case are as follows:

In the Court of Claims

ESTATE OF CHARLES F. WINTON, et al.
Plaintiffs
vs.
THE MISSISSIPPI CHOCTAWS AND THE UNITED STATES
} No. 29,821

THE FINDINGS OF FACT MADE BY THE COURT ON MAY 17, 1915, AS CHANGED BY THE PLAINTIFFS' MOTION TO AMEND.

(NOTE.—The findings as made by the Court are printed in long primer.

The plaintiffs' amendments proposing insertions are printed in **black letter**.

Where plaintiffs' proposed amendment omits any part of said findings such omission is indicated by two stars, the number of the page and ¶ of said findings where the part omitted can be found followed by two stars, and cites the page of said motion pertaining to such omission, i.e., * * p. 3, ¶ 2 * * Vol. 11, p. 74, indicates that plaintiffs' said motion to amend strikes out the second paragraph on page 3 of said findings (paragraph 4 of Finding 4), and is referred to on page 74 of plaintiffs' said motion to amend.

Volume 11, referred to herein, has reference to the last volume of the record made up commencing with the findings of May 17, 1915, and followed by all printed motions and briefs filed since that date.)

I.

The jurisdictional act under which this suit is brought was approved on April 26, 1906, *34 Stat., 140, and* provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

II.

The jurisdictional act was amended by an act approved May 29, 1908, *35 Stat., 457*, which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United

States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased: *Provided,* That the evidence of the interveners shall be immediately submitted: *And provided further,* That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

III.

The associates of Charles F. Winton, now deceased, are Robert L. Owen; James K. Jones, now deceased; Walter S. Logan, now deceased; Preston C. West; Frank B. Crosthwaite, and John Boyd.

Later, and before the filing of the petition herein, James K. Jones became, by assignment, an associate of the said Charles F. Winton, deceased. At the time of his death and for many years prior thereto Charles F. Winton was a citizen of the State of Oklahoma. Robert L. Owen and Preston C. West are and have been for many years citizens of the State of Oklahoma. At the time of his death and for many years prior thereto Walter S. Logan was a citizen of the State of New York. Frank B. Crosthwaite and John Boyd are and have been for many years citizens of the District of Columbia.

IV.

The treaty of Dancing Rabbit Creek was entered into between the United States and the Choctaw Nation on September 27, 1830 (*7 Stat., 333;* Miss. Code, 1848, pp. 121-128), by article 3, of which the Choctaws ceded all of their lands east of the Mississippi River and **except as provided in Article 14** (*See Vol. 11, p. 73, Finding 4*) agreed to remove west of that stream during the years 1831, 1832 and 1833.

Article 14 provided that—

"Each Choctaw head of a family being desirous to remain and become a citizen of the States should be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of 640 acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

By article 19 reservations of from two to four sections of land each were provided for a limited number of prominent members of the Choctaw Nation by name, and to each head of the family, not exceeding 1,600, a reservation proportionate in size to his improvements and the number

of acres he had in cultivation. Captains of the tribe, not exceeding 90, were given one section of land each, and the orphans of the tribe one-half of a section each.

(* * *P. 3, Finding 4, ¶ 2,* * * *Vol. 11, p. 74.*)

During the pendency of the negotiations between the United States and the Choctaw Nation for the "Dancing Rabbit Creek treaty" the Legislature of the State of Mississippi, where the Choctaws were living on January 19, 1830, passed an act abolishing tribal customs of Indians not recognized by the common law or the law of the State, making them citizens of the State, with the same rights, immunities, and privileges as free white persons; extending over them the laws of the State; validating tribal marriages; and abolishing the offices of chief, mingo, headman or other post of power established by tribal statutes, ordinances, or customs under penalty of $1,000 fine and imprisonment not exceeding 12 months. Miss. Rev. Stats., 1840; Code of Miss., 1848.

The act of the legislature of January 19, 1830, was ratified by the constitution of 1832 (art. 7, sec. 18), and reenacted in the general laws of 1840 and the code of 1848.

The constitution of Mississippi of 1868, however, abolished all distinctions of race, color, or previous status of its inhabitants. By section 2 of article 1, it declared that "all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi;" and by section 2 of the same article it declared that "no person shall be deprived of life, liberty, or property except by due process of law."

The Mississippi Choctaws who removed to the Choctaw Nation (* * *p. 3, Finding 4, ¶ 8,* * * *Vol. 11, p. 76*) became citizens of Indian Territory by virtue of section 6 of the act of February 8, 1887, *24 Stat., 390,* which act was amended by the act of March 3, 1901, *31*

Stat., 1447, declaring every Indian in Indian Territory to be a citizen of the United States.

After the Indian Territory was admitted on November 16, 1907, into the Union as a part of the State of Oklahoma the Mississippi Choctaws became, in common with other Indians residing in the State, citizens thereof; with all the rights, privileges, immunities, and franchises of such citizens. Sec. 1, art. 3, constitution of Oklahoma.

The enabling act of June 6, 1906, *34 Stat., 267,* providing for the admission of Oklahoma into the Union, contained certain reservations by the Government relative to Indians and their property.

On April 26, 1906, Congress extended certain restrictions upon the power of alienation and encumbrance by full-blood Choctaws in Oklahoma. *34 Stat., 144.*

V.

(There is no Finding "V" in the findings of May 17, 1915. Finding "V" of the tentative findings of December 7, 1914, commence with the fifth paragraph (p. 3) of Finding 4.)

VI.

The Choctaws who remained in Mississippi under article 14 of the treaty of 1830 adopted the dress, habits, customs, and manner of life of the white citizens of that State. They had no tribal organization or laws of their own, like those of the Indians in the Indian Territory, but were subject to the laws of the State of Mississippi, and no funds were ever appropriated by the Government for their support, though a great deal of land was given to those who remained. Said Choctaws did not live upon any reservation, nor did the Government exercise any supervision or control over them. Neither the Indian Office nor the Department of

the Interior assumed or exercised any jurisdiction over them, and never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi, and the department held that it had no authority to approve any contracts made with him.

VII.

On December 24, 1889, the Choctaw Nation, through its national legislature, memorialized Congress to provide for the removal of large numbers of Choctaws in the State of Mississippi and Louisiana who were entitled to all of the rights and privileges of citizens in the Choctaw Nation, and to make provision for the emigration of said Choctaws from said State to the Choctaw Nation. In 1891 a commission was provided for and funds appropriated by the Choctaw Council for the removal and subsistence of Mississippi Choctaws to the Choctaw Nation, and during the same year 181 were removed and admitted to citizenship in the nation.

VIII.

By the act of March 3, 1893, *27 Stat., 645*, Congress created the Commission to the Five Civilized Tribes, familiarly known as the "Dawes Commission," for the purpose of procuring, through negotiation, the extinguishment of the national or tribal title to the lands of the Five Civilized Tribes living in the Indian Territory and their cession to the United States for allotment in severalty among the members thereof.

By the act of June 10, 1896, *29 Stat., 321*, Congress directed the Dawes Commission to make a roll of the Five Civilized Tribes, and provided that applicants for enrollment should file their applications with the com-

mission within three months from the passage of the act, with right of appeal to the United States courts.

IX.

Thereafter, on June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton to proceed to Mississippi and secure contracts with such Indians there resident as might be entitled to participate in any distribution of the lands or moneys of the Choctaw or Chickasaw Nations, Winton binding himself to secure the evidence, powers of attorney, and contracts as prescribed by said Robert L. Owen, said Owen to provide the funds **and represent the claims of these people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen** (*R. 320-321, Ex. 11; Vol. 11, pp. 77-8*) and Winton to receive one-half of the net proceeds of the contracts. This agreement was modified July 23, 1896, by a second contract between the same parties, in which it was provided that Winton should act as attorney in Mississippi Choctaw cases under his agreement with Owen; that said Owen should have a one-half interest in all of said contracts; and in the event of accident to Winton that Owen should have full authority to take up all Mississippi cases in place of Winton.

X.

Immediately thereafter Winton proceeded to Mississippi, and during the year 1896 and the years immediately following procured approximately 1,000 contracts with full-blood Mississippi Choctaws (* * *p. 5, Finding 10, ¶ 1.* * * *Vol. 11, p. 78*). Under the terms of these

contracts said Winton and Owen agreed to use their best efforts to secure the rights of citizenship for said Mississippi Choctaws, as members of the Choctaw Nation, in the lands and funds of said tribe, for a fee of one-half of the net interest of each allottee in any allotment thereafter secured. These contracts were subsequently abandoned by said Owen and Winton, because void and non-enforceable under the acts of June 28, 1898, and May 31, 1900, as hereinafter more fully stated.

Sample copies of all contracts are set forth in an appendix to these findings.

XI.

At the time of the making of these said contracts by Winton and Owen the Mississippi Choctaws, full blood, were extremely poor, living in insanitary conditions and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges.

Early in 1896 said Owen **presented an oral argument and written brief, the latter in accordance with the request of Mr. Williams** (R. 335-6, Question 3, R. 542, Question 19, R. 548, Question 9, R. 552-3, letter of Mr. Williams to Mr. Wright, dated April 12, 1909, R. 554-5; letter of Mr. Williams to Mr. Thompson, dated April 12, 1909 (* * *p. 5, Finding 11, ¶ 3.* * * *Vol. 11, pp. 78-9*), to Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, with reference to the possible rights of Mississippi Choctaws to participate in the partition of lands of the Choctaw Nation in Oklahoma, at that time also submitting to Mr. Williams a copy of the Dancing Rabbit Creek treaty and calling his attention to article 14

thereof. This was the first time that said matter had been called to the attention of Mr. Williams.

(* * *P. 5, Finding 11, ¶ 3.* * * *Vol. 11, pp. 79-80.*)

At the time of the making of these contracts by Winton and Owen, the Mississippi Choctaws, full bloods, were extremely poor, living in insanitary conditions, and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges. In the year 1896 said Owen approached Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and as the result of statements made and documents and arguments submitted by him (the said Owen) said Owen convinced said Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation. (*Vol. 11, pp. 79-80.*)

Thereupon, on February 11, 1896, Mr. Williams wrote a letter to the Commissioner of Indian Affairs, stating that a great many Choctaws were living in his district, and made inquiry as to whether they would come in for anything under an act then pending to divide the Choctaw lands in severalty. On November 10, 1896, Mr. Williams wrote another letter to the Commissioner asking information as to the rights of Choctaws who had remained in Mississippi after the tribe had removed, stating that he had no information on the subject himself, and the Commissioner of Indian Affairs referred him to the Commissioner of the Five Civilized Tribes.

Thereafter and until March 3, 1903, when his country was placed in another congressional district, Representative Williams was consulted by the chairman, or member

in charge of pending bills, upon all legislation concerning the Mississippi Choctaws.

XII.

In December, 1896, Charles F. Winton presented a memorial to Congress on behalf of the (* * *p. 6, Finding 12, ¶ 1.* * * *Vol. 11, pp. 80-4, 91-94*) Mississippi Choctaws, asking that they be enrolled and permitted to share the privileges of Choctaw citizenship in the Choctaw Nation. Again, in January, 1897, a second memorial on behalf of the (* * *p. 6; Finding 12, ¶ 1,* * * *Vol. 11, pp. 80-84, 91-94*) Mississippi Choctaws was presented through Winton, seeking to accomplish the same purpose.

In September, 1897, the said Winton presented a third memorial of the same purport.

In the said memorial on behalf of the Mississippi Choctaws it was, among other things, insisted that the Mississippi Choctaws for a valuable consideration had bought and paid for two things to be enjoyed jointly and coincidentally, namely, the right of residence in Mississippi, with the further right of not losing the right of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of such right thus established by said treaty, and that such right could not be taken from them without their consent.

XIII.

Prior to the presentation of the memorial first above named, said Owen, in September or October, 1896, appeared before the Commission to the Five Civilized Tribes in behalf of the defendant Jack Amos, and 97 other full-blood Choctaws residing in Mississippi, and attempted to secure their enrollment under the act of June 10, 1896,

which authorized said commission to enroll Indians residing in the Indian Territory who filed their applications within three months from the date of the passage of that act, with right of appeal to the United States District Courts of the Territory. The commission refused to enroll said Amos and said other Choctaws on the ground that they were not resident in Indian Territory; whereupon an appeal was taken by said Owen to the United States Court for the Central District of Indian Territory, where the ruling of the commission was subsequently affirmed.

This latter decision was later indirectly affirmed by the Supreme Court on May 15, 1899, in the case of *Stephens vs. The Cherokee Nation, 174 U. S., 445*, which held the legislation under which the judgment was rendered constitutional and that the court was without jurisdiction to review the decisions of the courts of Indian Territory in refusing to enroll applicants for citizenship in the Five Civilized Tribes.

The litigation of the Amos case before the Dawes Commission and the Territorial court was instituted and maintained by said Winton and associates, and a brief was filed by them in behalf of the Mississippi Choctaws under the title of *Emma Nabors et al. vs. The Choctaw Nation* before the Supreme Court of the United States.

XIV.

At the same time the opinion was rendered in the case of *Jack Amos et al. vs. The Choctaw Nation*, as stated in the foregoing finding, the same Territorial court delivered an opinion in the case of *E. J. Horne vs. The Choctaw Nation*. In the latter case the claimant was a Mississippi Choctaw who, prior to the date of his application to be enrolled, had removed to the Choctaw Nation. It was

held that the claimant was entitled to be enrolled by reason of the provisions of article 14 of the treaty of 1830, regardless of his degree of Indian blood, having proved his descent from an ancestor who had complied with the provisions of the treaty. Incidentally it was also held that the act of the Choctaw Council of November 5, 1886, restricting the qualifications for Choctaw citizenship, was invalid because in conflict with the provisions of the treaty conferring the right.

XV.

On February 11, 1897, a resolution, which had been drawn by said Owen, was passed by the Senate directing the Secretary of the Interior to transmit the following information:

"*First*, A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"*Second*, Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"*Third*, Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"*Fourth*, Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

The Commissioner of Indian Affairs, in his reply to this resolution, February 15, 1897, transmitted, through the Secretary of the Interior, a copy of the memorial of the

Choctaw Nation of December 24, 1889, to Congress; a copy of the deposition of Greenwood Leflore, taken on February 24, 1843, before United States Commissioners Claiborne and Graves; and an extract from the report of United States Commissioners Murray and Vroom to the President, dated July 31, 1838, stating that the last two papers called for were copied from the printed record of the Court of Claims in Case No. 12742, entitled the *Choctaw Nation vs. The United States.* The Commissioner answered the last inquiry of the resolution by stating that he had not found any provision in the Choctaw treaties of 1837, 1854, 1855, or 1866 by which the Choctaws in Mississippi had relinquished any rights of Choctaw citizenship that they may have acquired under the fourteenth article of the treaty of 1830 or otherwise.

About this time the said Owen made an argument before the Committee on Indian Affairs of the House of Representatives, when considering House Bill 10372, which resulted in a favorable report being made by said Committee on said Bill, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and which Report had been drawn and submitted by Mr. Owen. *(Ex. 1, R. L. O. 90. Said favorable Report is known as H. R. Rep. 3080, 54th Cong., 2d Sess., R. 2923, Vol. 11, p. 84.)*

XVI.

The Indian appropriation act of June 7, 1897, contained the following item:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except interest in the Choctaw annuities."

(* * *P. 8, Finding 16, ¶ 2;* * * *Vol. 11, p. 84.*)
The above provision, 30 Stat., p. 83, was inserted in said Indian Appropriation Act, in the Senate as the result of an effort made by Owen and Winton to have enacted a provision more favorable to the Mississippi Choctaws. (*R. 293; Vol. 11, pp. 85-91.*)

XVII.

Following upon the direction contained in said act last named said Owen appeared before the Dawes Commission in the interest (* * *p. 8, Finding 17, ¶ 1;* * * *Vol. 11, pp. 80-84 and 91-94*) of the Mississippi Choctaws.

On January 28, 1898, said commission made a report to Congress, as required by the act of June 7, 1897 (Rept. of Com., 1898, p. 15), in which, after referring to the decision of the commission requiring removal by Mississippi Choctaws before they could acquire rights to allotments of Choctaw lands, and the affirmance of its decision by the citizenship court in the Jack Amos case, it was said:

"If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities; still, if any person presents himself, claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose."

The commission concluded by recommending that the question should be referred by Congress to the Court of Claims.

XVIII.

On June 28, 1898, Congress passed an act commonly known as the "Curtis Act," section 21 of which provided for the making of the rolls of the Five Civilized Tribes by the Dawes Commission, and further provided, among other things, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

* * * * * *

"No persons shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

(* * *P. 9, Finding 18, last paragraph;* * * *Vol. 11, pp. 94-96.*)

XIX.

Under date of July 1, 1898, said Owen prepared a general circular for Winton addressed to the Mississippi Choctaws, notifying them of the requirements of the Curtis Act

relative to Mississippi Choctaws and advising said Choctaws of the manner in which they must be identified.

December 2, 1898, the Dawes Commission, by printed circular notice and handbills, sent through the mails and posted in conspicuous places throughout the neighborhood in which the Choctaws in Mississippi resided, officially notifying the (* * *p. 9, Finding 19, ¶ 2;* * *Vol. 11, p. 97*) Choctaws of the time and places at which the commission would hear applications for identification under the Curtis Act, and explained in detail the steps necessary to procure identification thereunder.

XX.

Thereafter, in January, 1899, the Dawes Commission, through one of the commissioners, A. S. McKennon, proceeded to Mississippi, with several clerks and stenographers, and there identified and made up a schedule of 1,923 persons as being Mississippi Choctaws entitled to citizenship in the Choctaw Nation under the fourteenth article of said treaty. There were, according to the estimate of the commission, not more than 2,500 descendants of the Choctaws who remained under article 14 of the treaty of September 27, 1830, then living in Mississippi. The principle adopted in making this schedule was that proof of the fact that a claimant was a full-blood Indian, whose ancestors were living in Mississippi at the date of the treaty, was sufficient evidence to report his name as a Mississippi Choctaw under section 21 of the Curtis Act. This schedule, thereafter commonly known as the "McKennon roll," was subsequently approved by said commission, who forwarded the same with a report dated March 10, 1899, to the Secretary of the Interior. Said Schedule was (* * *p. 9, Finding 20, ¶ 1;* * *Vol. 11, p. 97*) formally disapproved by the Secretary March 1, 1907.

(* * *P. 10, Finding 20, ¶ 2, 3, 4 and 5;* * *Vol. 11, 98-115.*)

After the circular of July 1, 1898, set out in finding nineteen, was sent to the Mississippi Choctaws, Winton and associates co-operated with the Dawes Commission in obtaining a rapid identification of the Mississippi Choctaws by Winton going personally into the various counties where the Mississippi Choctaws lived and sending runners throughout the country urging the Mississippi Choctaws to appear before the Dawes Commission for identification. *Rec. 249, 309, 311. (Ex. 3, R.L.O., Dep. Rec. 522-4, Finding 43, p. 29, paragraph 2, Vol. 11, p. 99.)*

Plaintiff Owen prepared at considerable expense and furnished the Dawes Commission with an alphabetical index containing the names of sixteen thousand Choctaws which Commissioner McKennon testified was of great value to the Commission in identifying the Mississippi Choctaws. A duplicate copy of this alphabetical index has been by Owen filed in this case. *(Ex. 2, R. L. O., Dep. Rec. 294, 402, Vol. 11, p. 99.)*

XXI.

Shortly after transmitting the McKennon roll to the Secretary of the Interior as aforesaid, the Dawes Commission discovered that said roll was very inaccurate, containing many names that should have been omitted and omitting the names of many Indians who should have been identified. Because of these facts another party was organized and sent out by the Dawes Commission for the purpose of making a more accurate and complete roll of the Mississippi Choctaws under the act of 1898. Hearings were commenced at Hattiesburg, Miss., in December, 1900, and were resumed at Meridian, Miss., April 1, 1901, from which time continuous sessions were held at Meridian and other

places in Mississippi until the latter part of August of that year.

XXII.

February 7, 1900, said Winton and associates presented a memorial to Congress, praying that the treaty rights of the Mississippi Choctaws be so construed as to afford them the rights of Choctaw citizens without removal, or that they be permitted to have those rights determined in the courts. No action was taken by Congress upon this request.

XXIII.

April 4, 1900, said Winton and his associates memorialized Congress (Owen, Ex. 1, p. 202), requesting the following amendment to the Indian appropriation act then pending:

"*Provided*, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment."

The Indian appropriation act of May 31, 1900, contains the following provisos:

"*Provided*, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw country, and on proof of the

fact of bona fide settlement may be enrolled by such United States commission and by the Secretary of the Interior as Choctaws entitled to allotment.

"Provided further, That all contracts or agreements looking to the sale of encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void."

The last proviso was prepared by Mr. Williams and its passage secured by him, with assistance and co-operation of Senator Platt, they having been informed that a number of lawyers and other persons were securing contracts with the Mississippi Choctaws looking to the payment to them of certain shares of the prospective allotments to the Indians.

XXIV.

The Dawes Commission construed the provisions of the act of May 31, 1900, as prospective in its operation, and thereafter required from all applicants for enrollment proof of ancestry from Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the treaty of 1830. This construction constituted a reversal of the principle previously adopted by the commission in making the so-called "McKennon roll," to wit: A presumption that the ancestors of full-blood Choctaws residing in Mississippi had fully complied with the technical requirements of article 14 of said treaty. It resulted that only six or seven persons claiming as Mississippi Choctaws were enrolled under the act of May 31, 1900, although there were from 6,000 to 8,000 applications filed in 1900 and the early part of 1901.

During this period, from 1900 until the compromise settlement was made in the Choctaw-Chickasaw agreement of July 1, 1902, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby,

were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and contended that they had no rights and ought not to be enrolled as such citizens, and that no attention should be paid to their said claim to citizenship in the Choctaw Nation. (*Dep. of Ex-Indian Comm'r W. A. Jones, R. 3272, 3283, 3292, 3296; Dep. of Van Hoy, R. 3254-5-6. Vol. 11, p. 116-122.*)

The Secretary of the Interior on August 26, 1899, directed the Dawes Commission to follow the full-blood rule of evidence recommending in the report of said commission dated March 10, 1899, in the identification of Mississippi Choctaws, and again on October 19, 1900, directed the said commission to follow that rule of evidence.

"For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the Fourteenth Article of the Dancing Rabbit Creek Treaty. It was a most restricted ruling and resulted, as above stated, in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants." (*See Vol. 11, pp. 54 and 122.*)

XXV.

June 13, 1900, the Choctaw Cotton Co. was organized and incorporated under the laws of West Virginia by said Winton and Owen for the purpose of financing the removal of individual Mississippi Choctaws to the Indian Territory and there acquiring locations for them. Two-thirds of the capital stock of said company was issued to said Owen and

one-third to said Winton. Subsequently all contracts theretofore taken by said Winton and his associates with individual Mississippi Choctaws were assigned to said Choctaw Cotton Co.

The said Choctaw Cotton Company was on the 7th day of August, 1911, dissolved, and its charter annulled and surrendered by decree of the Circuit Court of Kanawa County, W. Va., and all of the stock of said Choctaw Cotton Company has been filed in the Court by Owen and Winton, the owners thereof. *(R 305, 2518, 2622-3, R. 2805, see Vol. 11, p. 123.)*

XXVI.

February 7, 1901, an agreement was made between the Dawes Commission and representatives on behalf of the Choctaw and Chickasaw Nations in the Indian Territory, which provided for the making up of the final rolls of all citizens and freedmen of the two nations upon which allotments of land and distribution of tribal property should be made. **Sections 13, 14 and 15** (* * *p. 12, Finding 26, ¶1, Vol. 11, p. 123* * *) of said agreement provided (* * *p. 12, Finding 26, ¶ 2 and 3;* * * *Vol. 11, p. 123*):

"MISSISSIPPI CHOCTAWS

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 19, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, 30 Stats., 495, and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State

of Mississippi to Indian Territory, as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"14. All 'Mississippi Choctaws,' as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaw and Chickasaw tribes within six months after the *ratification* of this agreement shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such 'Mississippi Choctaw' fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him, and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka

agreement wherein it provides for patents to allottees." (*House Doc. 490, 65th Cong., 2d Sess., p. 12.*)

The above three sections were subsequently amended at a conference between representatives of the Interior Department, the Dawes Commission, and the delegates of the Choctaw and Chickasaw tribes. Said Sections 13, 14 and 15 as amended at said conference read as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, or the act of Congress approved May 31, 1900, may, at any time prior to September 1, 1901, make bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior.

"14. When any such Mississippi Choctaw shall have continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him, as provided in that agreement for citizens of the Choctaw and Chickasaw nations.

"15. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives

if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed or up to the time of the death of such Mississippi Choctaw in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value, according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement, wherein it provides for patents to allottees." (*House Doc. 490, 56th Cong., 2d Session, p. 5, Vol. 11, pp. 123-126.*)

The effect of these amendments at said conference in the Interior Department was to strike out the recognition of (* * *p. 12, Finding 26, ¶ 4;* * * *Vol. 11, p. 126*) the schedule contained in the so-called "McKennon roll" of March 10, 1899, which had not been officially approved and which roll the Dawes Commission had requested permission to withdraw, and also to eliminate the full-blood rule of evidence relating to Mississippi Choctaws, and to provide in lieu thereof for the identification of Mississippi Choctaws in accordance with the acts of Congress enumerated in the section as amended and for the enrollment of Mississippi Choctaws, conditioned upon their removal in the manner and within the time as therein specified. The agreement as thus amended was transmitted on February 23, 1901, to the House of Representatives by the Secretary of the Interior, with his recommendation for

its ratification. Said agreement was not ratified, however, prior to the adjournment of Congress on the ensuing 4th of March.

XXVII.

April 1, 1901, the second party, referred to in Finding XXI, sent to Mississippi by the Dawes Commission for the purpose of making a complete and accurate roll of Mississippi Choctaws, resumed hearings at Meridian, Miss., and held continuous sessions there and at other places in Mississippi until the latter part of August, 1901. (* * *P. 13, Finding 27;* * * *see also Part One Defendant's Brief, pp. 10-11, and Plaintiff's Brief, Vol. 10, p. 53, Vol. 11, pp. 126-128.*) Being advised by said Owen, and believing that the roll made by Commissioner McKennon in 1899, referred to in Finding XX, was a finality and constituted a favorable judgment in behalf of the individual Mississippi Choctaws whose names appeared thereon, Winton and his associates advised all Indians who had previously been enrolled not to appear again before the commission for identification. (* * *P. 13, Finding 27,* * * *Vol. 11, pp. 128-129.*)

XXVIII.

June 20, 1901, said Winton, acting under advice of counsel, began taking new contracts with individual Choctaws living in Mississippi in lieu of all previous contracts theretofore taken by him and his associates, as described in Finding X. These latter contracts in place of stipulating for one-half of the prospective allotments of said Indians provided for the payment of a sum of money equal to one-half of the value of the net recovery of or for said Indians in land, money or money values, and, unlike said first-named contracts, further provided

for the removal of said Mississippi Choctaws from their places of residence to the Choctaw Nation in the Indian Territory. Said latter contracts were taken in a series numbered 1 to 834, beginning with the contract of the defendant, Jack Amos, and embraced about 2,000 persons. Said last-named contracts were also subsequently assigned to said Choctaw Cotton Co. **and have been filed in Court as evidence of authority and employment to represent the Mississippi Choctaws and for no other purpose.** *(R. Vol. 1, p. 25; Vol. 11, p. 179.)*

XXIX.

March 21, 1902, while preparation of the identification roll of Mississippi Choctaws was still in progress, an agreement was entered into between the Choctaw and Chickasaw Nations and the Dawes Commission, in which, by sections 41, 42, 43 and 44, it was proposed to fix the status of the Mississippi Choctaws. This agreement, **after being amended in Congress as hereinafter set out,** was approved by act of Congress July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902. *32 Stat., 641.* It was under this agreement, known as the "Choctaw-Chickasaw supplemental agreement," that practically all of the Mississippi Choctaws were enrolled and secured their right to allotments of Choctaw tribal lands. Section 41 of said agreement as originally signed by the Dawes Commission and representatives of the two nations reads as follows:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (*30 Stat., 495*), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at

any time within six months after the date of the final ratification of this agreement, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the final ratification of this agreement may be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after the date of the final ratification of this agreement."

April 24, 1902, a memorial by Winton and his associates was introduced in the Senate in behalf of the full-blood Mississippi Choctaws, which reviewed the prior legislation relative to their claims and prayed that the provisions of the supplemental agreement then pending should be amended so that the full-blood rule of evidence should be established and the Mississippi Choctaws be given time after identification to remove to the Choctaw country and longer time within which to make application. In this memorial it was stated:

"The unjust provisions and technical rules contained in sections 41, 42, 43 and 44 of the pending agreement were no doubt prepared by the attorneys representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but, on the other hand, commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws

who have already been identified, as stated above, and who are entitled to enrollment."

The said memorial prayed that sections 41, 42, 43 and 44, which it was alleged imposed onerous conditions upon Mississippi Choctaws, should be struck out and a plain provision made as follows:

"41. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, *30 Stat. L., 495,* and such full-blood Mississippi Choctaw Indians as may be identified by said commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"42. All 'Mississippi Choctaws,' as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification, shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws."

Senator Harris, at the request of said Owen, introduced an amendment embodying the foregoing statements from

the memorial, which was submitted to the Department of the Interior and was adversely reported upon.

Section 41 was subsequently amended during the ensuing debates in the House and Senate, and as finally enacted reads as follows, the amendments adopted being indicated by italics.

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of *their identification as Mississippi Choctaws by the said commission,* make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the said identification as Mississippi Choctaws shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after *six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians, whether of full- or mixed-blood, who received a patent to land under the said fourteenth article of the said treaty of 1830 who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of*

the said treaty of September 27, 1830, and to identification as such by said commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full-blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation. All of said Mississippi Chictaws so enrolled by said commission shall be upon a separate roll."

(NOTE.—That part of Section 41 in italics shows the changes made by amendments in accordance with the prayer of the Winton Memorial of April 24, 1902, after the section had been submitted and earnestly recommended to Congress for passage in its exact words by the Secretary.)

The rule of evidence that all full-blood Choctaws who had not removed to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, should be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the treaty of September 27, 1830, and identified as such by the Dawes Commission, incorporated in section 41 of the act of July 1, 1902, was introduced as an amendment to the bill by Mr. Curtis, and was drafted by one McMurray, attorney for the Choctaw Nation, and Assistant Attorney General Van Devanter (* * *p. 16, Finding 29, last paragraph;* * * *Vol. 11,* p. 129-133) in the way of a compromise settlement of, and to end the long and somewhat furious contest which demanded a larger recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, thus granting substantially the amendment contended for by attorneys for the Mississippi Choctaws and as prayed for by them in said memorial to the House and

Senate of April 24, 1902, that the full bloods should be admitted and given time after identification within which to remove to the Choctaw Country West.

XXX.

The passage of the Act of July 1, 1902, as submitted by the Secretary of the Interior to Congress, was actively opposed by Owen and Winton, Attorneys for the Mississippi Choctaws, and the amendment of Sections 41 and 42 thereof were made as the result of the long contest from 1896 to July 1, 1902, inclusive, waged by Owen, Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation. (* * *P. 16, Finding 30, ¶ 1;* * * *Vol. 11, pp. 133-144.*)

The Indian appropriation act of March 3, 1903, *32 Stat., 982, 987,* contained the following provision:

"That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory to be expended at the discretion and under the direction of the Secretary of the Interior."

The special disbursing agent of the Dawes Commission was thereafter sent to Mississippi to carry out the provisions of this act. Said agent there organized parties and assembled all said Indians that could be found and induced to come at Meridian, Miss., from whence they were later transported in two parties by special trains to Indian Territory, where they were further maintained until subsequently placed upon allotments and supplied with tools, other equipment, and rations for six months, all the expenses thereof being paid by the United States. The total number of said

Indians thus transported, maintained and equipped at the expense of the United States was 420.

XXXI.

The act of April 26, 1906, entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes of the Indian Territory, and for other purposes," contains the following:

"SEC. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

"SEC. 21.

* * * * *

"That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may, within sixty days from the passage of this act, appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed." 34 Stat., 137, 145.

One hundred and eighty-seven full-blood Mississippi Choctaws were enrolled under the provisions of section 2 of the above act.

Owen and Winton on behalf of the Mississippi Choctaws prepared a memorial which was submitted to

Congress by Representative Stephens, March 15, 1904 (Ex. 1, R. I., ( ), p. 341), and in the Senate by Senator Money, Cong. Rec., 3025, March 9, 1904, in which they prayed that no distinction against Mississippi Choctaws should be made (said Ex. 1, p. 342) and Congress, at the instance of Owen (R. 299) embodied in the Act approved June 21, 1906, 34 Stat., 341, a provision as follows:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

From 1896, when Owen and Winton first became interested in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and arguments both oral and written in support thereof, to Congress, the committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission, and the officials and representatives of the Choctaw Nation, and during said period Owen was recognized by the committees of Congress, Members of Congress, and other officials of the Government as the attorney for the Mississippi Choctaws, and as the said attorney faithfully, persistently, forcefully and successfully represented said Mississippi Choctaws before Congress, the committees of Congress, and the officials of the United States and the Choctaw Nation, and had it not been for the labor of said Owen in their behalf, the rights of

the Mississippi Choctaws to citizenship in the Choctaw Nation would not have been, as it was, recognized by Congress. (*R. 315, 316, 317, 318, 319, 410-11, 413-15, 416, 553, 2527, 2573; Dep. of Sen. Williams R. 535, 542, 548, 552-6; Vol. 11, pp. 144-146.*)

XXXII.

The Dawes Commission received applications from approximately 25,000 persons for enrollment as Mississippi Choctaws. Of this number 2,534 were identified by the commission, but of the persons so identified 1,072 failed to remove to Indian Territory or submit proof of their removal and settlement within the time required by law. The total number of applicants finally enrolled and who have received allotments as members of the Choctaw Nation is 1,643, of whom only 833 appear on the roll of March 10, 1899, and of whom only 696 had contracts with Winton and his associates.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws, subject to the restrictions upon alienation prescribed by section 1 of the act of May 27, 1908, *35 Stat., 312*, are held by the Government to the credit of the individual Indians entitled thereto. All other funds belonging to said enrolled Mississippi Choctaws are held as tribal funds, the names of said Mississippi Choctaws being carried on a separate roll.

The value of the undistributed property of the Choctaw-Chickasaw Nation is shown by a memorial of the Choctaw General Council of the 8th of October, 1909, placing the value of the unallotted lands, the coal and asphalt lands, the undisposed of town lots and the public buildings, belonging to the Choctaw tribe of Indians, the Choctaw Capitol building, the academy and seminary buildings, the Court House and jails, undis-

posed of, at sixty millions of dollars and in which the Mississippi Choctaws have an undivided equal interest with all other Choctaws. (*See Memorial Senate Doc. 390, 61st Congress, 2d Session, p. 123.*)

In the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, the plaintiff Owen, during the period of several years in which he was engaged in their behalf, representing them as their attorney, protecting their rights and obtaining the recognition and legalization of their rights to citizenship in the Choctaw Nation, has expended approximately thirty-five thousand dollars in cash for which he has not been reimbursed. Neither Winton nor any of his associates have ever received any compensation whatever for any of the services rendered in behalf of the Mississippi Choctaws. (*R. 302-3, 2624.*)

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the memorials of Winton and his associates with which the Senate and House of Representatives were flooded between 1896 and 1906, the arguments before the Committees of the Senate and of the House, the arguments before the Dawes Commission, the United States Courts, the Attorney-General, and the Interior Department created a powerful sympathy in favor of the Mississippi Choctaws, caused Congress to pass numerous acts in their interest, caused the identification of the Mississippi Choctaws, and resulted in the enrollment of 1,643 persons on a separate roll under the act of July 1, 1902, as amended by the acts of April 26 and June 21, 1906. (*34 Stat. L. 137, 145, 341.*)

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the said 1,643 Mississippi Choctaws who were admitted to

citizenship in, and received allotments as members of, the Choctaw Nation, obtained the right to become such citizens and thereby receive allotments as a result of the labor and work done by Winton, Owen and associates during a period of several years prior to the passage of the acts under which they were enrolled and allotted, and that a reasonable, just and equitable compensation for such services on the principle of *quantum meruit* would be a sum equal to ——— per cent of $15,000,000.00, the total value of the estates thereby received by the said 1,643 Mississippi Choctaws, or the sum of $———. (*R. 302, 345-6, 352-3, 472, 2524, etc.; Vol. 11, pp. 147-162.*)

XXXIII.

THE ESTATE OF CHESTER HOWE.

1. Chester Howe, deceased, was for many years an attorney and counsellor at law, a resident of the Territory of Oklahoma, and a practitioner therein. In 1896 he removed his office and place of practice to Washington, D. C., where he continued to reside until his death, which occurred October 1, 1908, while on a visit to Oklahoma.

2. In the early part of the year 1899 said Howe, by virtue of an oral agreement made with Louis P. Hudson, acquired an undivided one-third interest in all contracts taken by said Hudson and Arnold for the firm of Hudson & Arnold, with individual Mississippi Choctaw claimants, the purpose of said contracts being to secure the rights of said Mississippi Choctaws to allotments of tribal lands of the Choctaw Nation and to remove said Indians to the Indian Territory.

The said interest thus acquired by said Howe included

approximately 465 contracts with individual Mississippi Choctaw claimants taken by L. P. Hudson and J. E. Arnold, or the firm of Hudson & Arnold, prior to the dissolution of said firm, in the month of August, 1901.

3. The services contemplated by said agreement to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation.

4. Large sums of money were collected by said Arnold and said Hudson from various persons on account of said contracts with said individual Mississippi Choctaw claimants, the amount of which is not disclosed, for which said Hudson and said Arnold failed to account to said Howe for the latter's proportional share thereof. Because of this fact said Howe became greatly dissatisfied in the spring of 1902 with the Mississippi Choctaw business and decided to withdraw therefrom, and notified his correspondents accordingly. Thereupon about May 12, 1902, said Arnold went to Washington and on that date procured the further assistance of said Howe by the acknowledgment, in writing, of the agreement previously made by Hudson with Howe that the latter should receive one-third of the fees in the Hudson and Arnold contracts; and also by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. Thereafter, in May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaw applicants, upon a contingent fee of $5,000, to be paid in sums of $250 or more by Howe out of his own fees as fast as the same could be collected, the amounts thus collected to be evenly divided between the said firm of Ralston & Siddons and said Howe until the fee should be paid.

(* * *P. 18, Finding 33, ¶ 5;* * * *Vol. 11, pp. 162-164.*)

Between the months of December, 1900, and July, 1902, the said Howe was actively engaged in presenting claims of Choctaws resident in Indian Territory, and mixed-blood Indians, claiming as Mississippi Choctaws, for allottable shares of lands and moneys of the Choctaw Nation before the Interior Department, which had been rejected by the Dawes Commission. (*R. 1634, 1635, 1718, 1719, 1721, 1722; Vol. 11, pp. 162-164.*)

It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, or that such legislation as was enacted, and under which said Mississippi Choctaws received allotments in the tribal lands of said Choctaw Nation, was the direct result of his professional services.

* * * * *

XLIII.

THOMAS B. SULLIVAN AND JOSEPH H. NEILL

1. In the spring of 1897 Thomas B. Sullivan, a practicing attorney, and Joseph H. Neill, a merchant, both residing at Carthage, Miss., were jointly employed under verbal agreement by Charles F. Winton to assist him to secure contracts in Mississippi with Choctaw claimants. (* * *P. 29, Finding 43, ¶ 1;* * * *Vol. 11, pp. 164-167.*)

2. Said Sullivan and Neill thereafter and until May, 1903, secured a number of said contracts for said Winton in the joint names of Winton and his associates, Owen, Daley and Logan, and also co-operated with and assisted said Winton in bringing said Indians and their witnesses

before Commissioner McKennon for identification and enrollment at the hearing conducted by him in Mississippi in 1899.

(• • P. 29, Finding 43, ¶ 3 and 4; • • Vol. 11, pp. 164-167.)

5. During the month of March, 1903, said Sullivan and Neill in further pursuance of their said employment moved 22 Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen.

6. Said Sullivan and Neill have not received any compensation directly or indirectly for their services or expenses in this matter.

WILLIAM W. SCOTT,
Attorney for Plaintiff.

The Memorials in behalf of the Mississippi Choctaws which Winton and associates prepared and caused to be presented to Congress referred to in the findings of fact and Congressional documents bearing out the same question are as follows:

MEMORIAL AND PETITION ON BEHALF OF THE MISSISSIPPI CHOCTAWS

To the Honorable, The Secretary of the Interior:

In anticipation of your report to the Congress of the United States, as to the condition and status of the full-blood Choctaws of Mississippi, most of whom are utterly poverty stricken and who speak the Choctaw language alone, I have the honor to submit the following memorial, requesting that you make it a part of your findings or at

least an exhibit to your report, and give it such consideration as in your judgment you may deem just.

It is the purpose of this petition to show that the Mississippi Choctaws for valuable consideration expressly bought and paid for two things, to be enjoyed jointly and coincidently, to wit: the right of residence in Mississippi, with the further right of not losing the privilege of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of this right thus established by treaty, and that such right cannot be taken from them without their consent. As exhibits hereto, I inclose (Exhibit 1) a short memorial of the Mississippi Choctaws; (Exhibit 2) a second memorial; and also (Exhibit 3) Report H. R. 3080, 54th Cong., 2d Sess.

HISTORICAL STATEMENT.—October 18, 1820 (U. S. Stats. 7, 211, Art. 2), the lands in Indian Territory and to the head of Canadian and Red Rivers, equal to about 26,000,000 acres, were bought by 10,000 Choctaw Indians, who then lived in Mississippi, without condition, and especially without condition that the land should escheat if the Indians became extinct or abandoned it. It was equal to about 2,600 acres apiece.

May 28, 1830, Congress passed an Act authorizing an exchange of lands west of the Mississippi River for those east of the Mississippi River held by Indian tribes, which Act contained a general proviso as follows: "Provided always that such lands shall revert to the United States if the Indians become extinct or abandon the same." This Act manifestly should not attach a condition to the land previously granted the Choctaws in 1820, although it was subsequently injected in the Choctaw Patent of March 23, 1842.

The following September of 1830, a treaty was made by

the Mississippi Choctaws, including those there now resident as well as those who moved to the Indian Territory, in which the United States contracted and conveyed to the Choctaw Nation, a tract of country west of the Mississippi River, now embraced in the Choctaw and Chickasaw Nations and in the leased district, previously conveyed in 1820, but now pledged anew in fee simple to these Mississippi Choctaws and their descendants, about 20,000,000 acres or 2,000 acres apiece.

This treaty of 1830 was signed by one hundred and seventy-three leading Choctaws, who were simply the leading men of the various towns, the Choctaws, at that time, having no organized constitutional government. This is a very important fact to which your attention is called, for it renders it impossible to differentiate the rights of the Mississippi Choctaws, a part and parcel of the Choctaw Nation which remained in Mississippi, from other Choctaws who moved west, to become generally known as the Choctaw Nation, the Choctaws of Mississippi being as much a part of the Choctaw nation under this old organization and of right as much entitled now to be so regarded as the Choctaws who moved west. The Choctaw Nation in 1830 consisted simply of an aggregate of individual Choctaw Indians, who associated in little towns and villages and had no constitutional government. The present Choctaw constitution was not adopted by the western Choctaws until January 11, 1860, thirty years subsequent to this time.

The treaty of 1830 was very difficult to make; the commissioners repeatedly failed, but it was finally accomplished by Greenwood Laflore, Principal Chief of the Choctaws, by means of inserting the pledges and guarantees of the 14th Article of the Treaty of 1830. Except for this article, the treaty could not have been made by the United

States. It was and is now a very important article to the Mississippi Choctaws (see affidavit of Greenwood Laflore, Exhibit 3, p. 6, paragraph 1). This treaty, which secured for the United States lands of immense value in Mississippi still retained by the Choctaws, declares in specific terms that those Choctaws, who chose to remain in Mississippi should have the right of selecting land, acquiring title, and selling it and becoming citizens of Mississippi and remaining there and still "not lose the privilege of a Choctaw citizen." This important right of becoming citizens of Mississippi, remaining in Mississippi and still not losing the privilege of a Choctaw citizen has not been relinquished by the Mississippi Choctaws (see declarations made by Hon. D. R. Francis, Secretary of the Interior, and that of the Commissioner of Indian Affairs, to the effect that such Choctaws have not relinquished such rights as shown by any of the records of the United States Government—Exhibit 3, page 2,—this communication being in response to a resolution of the U. S. Senate, asking the status of the Mississippi Choctaws).

The privilege of a Choctaw citizen consists of certain property rights on the one hand and certain political rights on the other. The property rights consist of a joint communal ownership in the national property, including land at that time equal to about 2,000 acres each, proceeds of lands, use of public lands, as well as an interest in public funds, and the right to impart to his children, the issue of his body, the same communal right of property enjoyed by the parent; the political rights are those accorded under the tribal law in the matter of protection to life and property, as established by tribal statute. The privilege of a Choctaw citizen consisted of property rights of great value and of political rights of small value. No Choctaw law required a recognized bona fide Choctaw to live within

a prescribed territory east or west. His birth and blood fixed his status which was not impaired by non-residence.

In the division which took place in 1830, a large part of the Choctaw people, determined at that time to remain in Mississippi, although afterward all except your petitioners were compelled by great pressure to move to the Choctaw Nation west and are now there resident; they determined to have allotments of land there, where their homes were (see evidence in New Proceeds case, to which reference is here made, and which is attached as part hereof) and at the same time not give up the property rights which they had previously bought and paid for in Indian Territory, by the Treaty of 1820; they determined not to give up the privileges of a Choctaw citizen, which included this ownership of large landed property, but they were willing, in exchange for individual allotments in Mississippi, to give up, as an offset, their individual interest in the annuity then existing, and secured by the Treaty of 1830.

The history of this matter is fully known and abundantly set forth in the record above recited. It was a fair trade and the treaty was so drawn that they could not reclaim an interest in the annuity by removing west. This property right, bought by the Mississippi Choctaws, as grantees in the Treaty of 1820 and 1830, and in exchange for property by them delivered as grantors in those treaties, they did not intend to relinquish; they were property rights of great money value, and they expressly stipulated that they should not lose this privilege because of their determination to remain in Mississippi.

The Mississippi Choctaws, although extremely poor then and now, were not and are not unlike other mortal men of strong affections, who love the land of their birth, in which they had raised their babes, and found happiness with

wives, friends and neighbors, and in which they had buried parents, wives and children. It should not be accounted an unworthy or unpatriotic motive in these people that they loved Mississippi and refused to leave it.

It was insisted before the Court, in the case of John Doe v. Choctaw Nation (U. S. Court for Indian Territory, Middle Division, July 1, 1897) that the two latter clauses of Article 14, to wit:—"persons who claim under this Article shall not lose the privilege of a Choctaw citizen; but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity," really means that they shall lose the privilege of a Choctaw citizen if they do not remove.

It is insisted that the latter clause "if they ever remove," really means that they must remove, or forfeit or lose the privileges granted in the first clause, and that no other construction of this language is rational. It is suggested in answer to this singular view, that it is perfectly rational that the first clause should have its full force and effect, and the latter clause should have its full force and effect, without the latter destroying the first. It is perfectly rational to suppose that the Mississippi Choctaws should continue to live in Mississippi, which they were deliberately proposing to do, and that the clause "persons who claim under this Article shall not lose the privilege of a Choctaw citizen" with its large property rights should apply to them with full force, whether they did or did not remove.

It is perfectly rational that the second clause should apply to the Mississippi Choctaws with full force if they ever did remove, and it was reasonable and right that the Mississippi Choctaws who got an advantage in land over the western Choctaws, should not be allowed, after they had gotten this advantage, to remove to the Choctaw Nation on exactly equal terms with those who had not gotten

land in Mississippi. It is entirely rational that the Mississippi Choctaws should have given up their right in the annuity for the privilege of allotments in Mississippi, and having given up the right in the annuity, it was rational and reasonable that they should not by the act of removal repossess themselves of this consideration. With profound respect to the Honorable Court, who seemed to have been impressed by this argument, it is insisted that the language if construed in the manner of interpretation urged by the western Choctaws, should have been written as follows, to wit:

"Persons who claim under this Article shall lose the privilege of a Choctaw citizen unless they remove west to the Choctaw Nation, but in the event of removal shall have the right to be recognized as Choctaw citizens except that they are not to enjoy any portion of the Choctaw annuity."

The second clause of the sentence under consideration, as actually written, to wit:

"If they ever remove, are not to be entitled to any portion of the Choctaw annuity," is manifestly a condition modifying the first clause, which is a reservation of a broad right of citizenship, and which means all it says and nothing less, to wit:

"Persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

Why this declaration?

Manifestly for the reason that residence in Mississippi might, except for this declaration, be some time construed as abandonment of Choctaw citizenship, and therefore, in the same identical Article in which permanent citizenship in Mississippi was provided, was inserted the express provision by which the right of Choctaw citizenship should not be taken away from those who remained in Mississippi, and the sweeping words were inserted, as the treaty re-

cites—"persons who claim under this article shall not lose the privilege of a Choctaw citizen."

But since they got a special allotment in Mississippi, they agreed to give up their right in the annuity, with a provision that would protect the western Choctaws against the Mississippi Choctaws ever reclaiming a part of the annuity, even if they did move west and become a part of the community, which the Mississippi Choctaws however had determined not to do. It was therefore entirely proper and right and necessary to modify the broad proposition that the Mississippi Choctaws who claimed allotments under the 14th Article should not repossess themselves of any interest in the annuity, which, by this contract, was relinquished, even if they should remove to the Choctaw Nation, and the modifying clause was rightly inserted as follows, to wit: "but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

The Mississippi Choctaws did not consent to a trial of their rights in the fictitious case of John Doe, did not present their evidence or argue such a case and earnestly protest that they should not be required to do more than the western Choctaws, that is, assist the Government to enroll their numbers. A careful examination of the language of the 14th Article of the Treaty of 1830 makes their rights perfectly clear and incapable of misconstruction.

Let us analyze this language. The clauses in controversy are as follows: "Persons who claim under this Article shall not lose the privilege of a Choctaw citizen;

But
if they ever remove
are not to be entitled to any portion of the Choctaw annuity."

The first is a general proposition, modified by a condition or exception introduced by the word "but," a word used

in the English language to signify an exception or a qualification in the nature of an exception, which cannot be construed as a negation of the proposition it qualifies. It introduces a qualifying clause, to wit, "are not to be entitled to any portion of the Choctaw annuity," which qualifying clause is itself qualified by the interjection of a phrase "if they ever remove," a phrase which might be entirely omitted without destroying the sentence.

If they did not remove, it is manifest as a physical fact that they could not enjoy the annuity, separated as they were by six hundred miles of roadless country; there was only one contingency by which they could possibly enjoy the Choctaw annuity, and that was by removing, and this contingency is provided against by the insertion of the qualifying phrase, "If they ever remove." If this phrase were entirely omitted, the latter clause would be broader than it is and would leave the words, "but are not to be entitled to any portion of the Choctaw annuity," and even this broader construction of the language is incapable of being construed as a negation of the first clause, which it qualifies, to wit: "Persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

The word "but" introduces the condition. The phrase "if ever they remove" qualifies alone the clause which follows it, to wit: "are not to be entitled to any portion of the Choctaw annuity."

The entire clause, as qualified by the phrase "if they ever remove," being itself a qualification of the clause "persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

The general proposition therefore so modified cannot be regarded under any possible circumstances as being negatived by the modifying clause or in any way diminished except as to the annuity.

The modifying clause therefore cannot be construed to mean a negation of the principal proposition, but must be confined in its significance to a modification in the nature of the exception stated to the privilege of a Choctaw citizen, to wit, "the annuity." This exception is a reasonable one, based upon a fair exchange of values, whereby the Mississippi Choctaws got land and yielded their interest in the annuity then existing, and placed a condition upon the privileges of Choctaw citizenship, which they retained, by inserting a distinct clause that they should not, even if they removed, repossess themselves of their rights in the annuity which they had exchanged for allotments in Mississippi.

It is true that in the case of John Doe v. Choctaw Nation, the Honorable Court does not pass upon the question as to the rights of the Mississippi Choctaws, in the event they should actually move into the Choctaw Nation. Indeed, in declaring that those Mississippi Choctaws who had gone into the Choctaw Nation prior to July 1, 1897, were entitled to allotment, the court evidently thinks that the other Mississippi Choctaws would acquire the right if they should enter the Choctaw Nation, but in finding that John Doe, a Mississippi Choctaw (a legal fiction, created at the instance of the able counsel for the western Choctaws), is not entitled to enrollment because he has not moved into the Choctaw Nation, the Honorable Court, by implication, would appear to impose a condition that removal to the Choctaw Nation is essential and that the Mississippi Choctaws who chose permanent residence in Mississippi with the express agreement that they should not lose the privilege of a Choctaw citizen by so doing, will be required to lose such privilege by so doing, and that the 14th Article, which declared that such persons should not lose the privilege of a Choctaw citizen really meant

that they should lose such right by residence in Mississippi, if persisted in.

While the Mississippi Choctaws were not parties to subsequent treaties between the United States and the Choctaws west, still, on April 28, 1866 (Art. 10 Revised Treaties, 292), the United States reaffirms all obligations rising out of treaty stipulations, and in Article 45 of same Treaty (Revised Treaties, 301) declares that

"All the rights, privileges and immunities heretofore possessed by said Nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be and are hereby declared to be in full force, so far as they are consistent with the provisions of this treaty."

This appears to sufficiently recognize the rights of the Mississippi Choctaws who were granted the reasonable privilege of living in Mississippi and not losing the privilege of a Choctaw citizen.

It is true that by Articles 11, 12 and 13 of the Treaty of 1866, in the allotment scheme therein set forth, but which was never put into effect, it was provided that a certain notice should be given—"not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi, etc., to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws," and that it was further provided that within five years after the allotment of land had taken place such absentee should select his land and establish residence, or forfeit such right. This condition as imposed on persons not protected under the 14th Article of the Treaty of 1830, was competent on the part of the United States and Choctaw and Chickasaw Nations, but in

so far as it might be argued to relate to the Mississippi Choctaws protected by the 14th Article, it appears only necessary to state that while it recognizes their rights, it proposed a contingent condition of possible forfeiture which neither the United States nor the Choctaw Nation would be competent without the consent of these Mississippi Choctaws to impose, as no one can take from them a vested property right without their consent. The Secretary of the Interior plainly says they were not parties to the Treaty of 1866, or to any other treaty relinquishing their rights.

Attention is called to the fact that the Choctaws themselves have never for a moment denied the rights of the Mississippi Choctaws to an equal interest in the lands west. Indeed, on December 24, 1889 (Exhibit 1, page 2), the Choctaw Nation west of the Mississippi, through their highest constituted authorities, the General Council of the Choctaw Nation, passed a resolution, approved by the Hon. Benj. F. Smallwood, Principal Chief of the Choctaw Nation, declaring that the Mississippi Choctaws are entitled to all of the rights and privileges of citizenship in the Choctaw Nation, notwithstanding the fact of their residence in Mississippi then and now and since 1830, or fifty-nine years, and requested the United States Government to make provision for the immigration of the said Choctaws to the Choctaw Nation west as they were too poor to immigrate themselves. This resolution further provided that a copy of this declaration and memorial by the General Council of the Choctaw Nation, be furnished to the Speaker of the House of Representatives of the United States and to the President of the Senate of the United States, and to the Commissioner of Indian Affairs, with the request that they do all they could to secure the accomplishment of the object of the memorial. It is pertinent to ask what action

has been taken by the Mississippi Choctaws since this time, to deprive them of their treaty rights, freely conceded and voluntarily declared by the General Council of the Choctaw Nation and the Principal Chief of that Nation on December 24, 1889?

There has been no treaty since that time, but the Mississippi Choctaws have been astonished and grieved to find that under the legal fiction of John Doe, son of Richard Doe, their rights have been much prejudiced at the instance of the Choctaw Nation west, in a case presented to the U. S. Court, without their knowledge or consent, and upon erroneous information given to said Court, who, with honorable intention, has made a finding not just to the Mississippi Choctaws.

It is true that the Court holds (John Doe v. Choctaw Nation, Middle Div. U. S. Court for the Indian Ty., July 1, 1897)—"that the descendants of the Mississippi Choctaws, by virtue of the 14th Article of the Treaty of 1830, are entitled to all of the rights of Choctaw citizenship, with all the privileges and property rights incident thereto," and this includes even the annuities they were not to enjoy, but adds the condition "provided they have renounced their allegiance to the sovereignty of Mississippi by removing into the Choctaw Nation, in good faith, to live upon their lands, renewing their allegiance to that Nation, and putting themselves in an attitude whereby they will be able to share in the burdens of their government, as well as to receive the benefits flowing from citizenship." In other words, they shall have all these rights provided they have previously to this decision given up their right of residence in Mississippi, which they expressly bought and paid for with the agreement that they should not lose the privilege of a Choctaw citizen. In other words, Article 14, of the Treaty of 1830, is construed as an alternate prop-

osition, by which the Mississippi Choctaws who desired to live in Mississippi should not be allowed to do so without "losing the privilege of a Choctaw citizen," a property right of great value, the very thing which Article 14 was drawn to prevent. Article 14 gave them the right to reside in Mississippi and expressly declared that by this residence they should "not lose the privilege of a Choctaw citizen."

Yet the Honorable Court is of the opinion "that absent Mississippi Choctaws are not entitled to enroll as citizens of the Choctaw Nation," and apparently gives no opportunity for any of the Mississippi Choctaws to put themselves in harmony with the spirit of this decision which provides for the enrollment of those Mississippi Choctaws who had moved into the Choctaw Nation prior to July 1, 1897, by giving no time in which the other Mississippi Choctaws might enter.

We wish to know the reason why July 1, Anno Domini, 1897, is established as a dead line against those Choctaws residing in Mississippi on that date? With profound respect, on behalf of the Mississippi Choctaws, it is earnestly urged that that date is nowhere set up by any of the treaties as being made a bar to their rights, and that the Honorable Court has been seriously misled with regard to some of the important facts, from which he has drawn his conclusions. For example, the Honorable Court in referring to the judgment of the Supreme Court of the United States, in the Net Proceeds case, states that the money was turned over to the Choctaws by the United States, and by them, with the knowledge and consent of the United States, divided among the Choctaw people in 1889 who lived in the Nation, and that not one farthing of it was ever paid to an absent Mississippi Choctaw, and that no portion of it was ever claimed by them, and that therefore the Mississippi Choctaws confessed that they were not entitled to

the rights of Choctaw citizenship, which however the Choctaw Nation, at this very time, to wit, December 24, 1889, declared that the Mississippi Choctaws fully possessed. The Honorable Court was misinformed. This fund was not paid to the citizens of the Choctaw Nation as such. It was a fund due to special individuals, and paid to them in amounts greatly varying in value, each award being different from the other, and was not a per capita payment at all, nor did a Mississippi Choctaw have a right to participate in it as such, but to the extent that this money was due an individual Choctaw, whose land had been sold by the United States, which he had selected under the 14th Article of the Treaty of 1830, to that extent the money was due to him as an individual, whether he was in the Choctaw Nation or in Mississippi or in any other State, and if it was not paid to such a one in Mississippi when entitled, the Choctaw Nation and the United States are both bounden for it.

A second argument which impressed the Court was the decision of the Supreme Court of the United States (117 U. S. 288) in which the eastern band of Cherokees demanded a part of the invested funds of the Cherokee Nation west, and the Honorable Court held that the eastern Cherokees were individual Indians not shown by evidence to have succeeded to the rights of certain Indians through whom they claimed as descendants, and that in order to enjoy the rights of Cherokee citizenship they would be obliged to move into the Cherokee Nation and be re-admitted, according to Cherokee law. There was no 14th Article in any of the Cherokee treaties like that of the Choctaw Treaty of 1830, or any agreement that any Cherokees could live in North Carolina and still not lose the privilege of a Cherokee citizen. So the case is not a precedent or at all in point.

The general rule of any community or tribe requires an individual who desires to have the privilege of membership to perform the duties of membership. There is only one exception known to us in history—it is the exception made in favor of the Mississippi Choctaws, who were, by the United States and Choctaw Nation, expressly pledged the right to live in Mississippi and still not lose the privilege of a Choctaw citizen, and not only not required to perform the duties of Choctaw citizenship, but on the contrary were expressly permitted to remain in Mississippi and become permanent citizens thereof, while retaining Choctaw citizenship, which really meant important property rights.

The Honorable Court is persuaded to believe that the privilege of a Choctaw citizen, retained by Choctaw choosing to remain in Mississippi under the XIV Article, really means the privilege of moving out of Mississippi into the Choctaw Nation west, and becoming a citizen. He thinks that the privilege of a Choctaw citizen referred to is the privilege of acquiring, by removal, the privilege of citizenship. The privilege of a Choctaw citizen is construed not to mean the right which inheres in the citizen generally, but the privilege of securing such right by doing certain things.

The Honorable Court was led into error by the argument that the privileges of a Choctaw citizen were retained under a condition not named in the treaty. The judgment referred to say they were doubtless to enjoy these rights. "When they put themselves into a position that these privileges could be conferred upon them; and under the conditions and purposes of the treaty how would it be possible for them to put themselves in such position without first removing within the territorial jurisdiction of the Choctaw Nation and within the sphere of its powers, what privileges," asks the Court, "would it be possible for the Choc-

taw Nation to confer, or a Mississippi Choctaw receive, so long as he remained in Mississippi and out of the limits of the Choctaw Nation?" We answer, the very rights we now seek, to wit: not political rights but property rights of large value, in land and money, of an estate in process of division to the owners thereof. This adequate answer would seem to dispose of the argument, which appears to have convinced the Honorable Court. It is not political protection the Mississippi Choctaws seek. It is their property rights in this estate now in process of division.

The Honorable Court thinks it unjust and inequitable to permit the Mississippi Choctaws, whom, he alleges, sixty-five years ago, broke away from their kindred and their Nation and have done no duties as Choctaw citizens, to reach forth their hands from a distant and alien home and lay hold of a part of the public domain or common property of the Choctaw Nation, and appropriate it to their own use. This surprising statement we deem it proper to answer; first, the crime of the Mississippi Choctaws, who sixty-five years ago broke away from their kindred and nation, consisted in remaining peacefully in their homes and refusing to move from the State of Mississippi which they loved, and it seems neither a malicious or vindictive act nor one wanting in patriotism; their Nation broke away from them at the instance and urgent request of the United States, not they from their Nation; it is true that they have not since exercised the duties of Choctaw citizenship, but it is also true that the Choctaw Nation, expressly and in terms, agreed with them that they should not be required to do so; and it is also true that the United States agreed with them that they should not be required to do so, and used this as a strong consideration to secure a compliance to the treaty, without which the treaty was itself impossible; and when the Mississippi Choctaws "reached forth

their hands from a distant and alien home to lay hold of a part of the Choctaw domain," they reached forth their hands for what they bought and paid for; for which they paid their right in and to a still larger part of land east of the Mississippi River, which they sold and relinquished to the United States, and are guilty of no wrong in seeking their own, recognized as their own not only by the Article 14 of the Treaty of 1830, and by the Treaty of 1866, but by the striking, complete and absolutely unconditional acknowledgment of the General Council of the Choctaw Nation, which took pains to memorialize the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and the Commissioner of Indian Affairs, and declared that the Mississippi Choctaws were entitled to all the rights of Choctaw citizenship, and this too while they were domiciled and resident in Mississippi.

They reached forth their hands to lay hold of what the Honorable Court itself freely concedes to every Mississippi Choctaw who landed in the Choctaw Nation prior to the first day of July, 1897. Why this invocation against the full-blood Choctaws who reside in humble and poor habitations in the Mississippi swamps and piney woods, describing them as being little less than highwaymen, when they seek only their rights; when they seek only the right freely granted to those who had the means to reach the Choctaw Nation prior to the first day of July, 1897. Why should they be compelled at all to move to the west? And if remove they must, why say they shall not remove after July 1, 1897? Is there then no excuse for the Mississippi Choctaws who have failed to get to the Choctaw Nation? Does not the General Council of the Choctaw Nation and the Principal Chief of the Choctaw Nation, in the memorial before recited, declare to the highest authorities of the

United States that the Mississippi Choctaws are too poor to immigrate themselves? Is their extreme poverty no excuse? Is it unpardonable? Does it justify cutting them off utterly from their inheritance? Are they to be deemed dishonest because of their excessive poverty, or because they seek property, acknowledged on all hands and by everybody to be their own and which they sorely need? Never until July 1, 1897, was their right questioned. The Mississippi Choctaws are perfectly assured that on that day if the Honorable Court had been informed of all the facts that they would have had the sympathy and favorable judgment of the Honorable Court.

The Mississippi Choctaws are the owners, by purchase, of their part of the common property. It was bought by them as grantees in 1820 and 1830, for the considerations paid by the Mississippi Choctaws, as grantors, in these treaties. The Mississippi Choctaws are not unaware that if their rights are taken from them it will increase the per capita share of land and money of the Choctaws and Chickasaws west, and they therefore perceive a reason why the proposed beneficiaries seek to impose conditions against the Mississippi Choctaws, impossible of compliance and thus to deprive them of their rights.

The Western Choctaws having determined on the distribution of their lands, and having appointed a committee to wind up the affairs of the Choctaw Nation, are now laying great stress upon the Mississippi Choctaws bearing the burdens of citizenship, under a government confessedly and notoriously moribund. This ingenious and disingenuous argument has deeply impressed the Honorable Court, the Mississippi Choctaws being undermined through the unchallenged misrepresentations made in the case of the fictitious case of John Doe. It is a pity not a single Mississippi Choctaw could be found and that John Doe had

to be substituted. All actual cases were given fifteen days of preparation—as under the law the Court could only try *de novo* as the Court says—but as for John Doe he needed no preparation or argument, but *ex parte* a case is decided prejudicial to us without notice.

These duties of citizenship from which the Mississippi Choctaws were expressly absolved (and they paid for their absolution) are now absolutely valueless to the western Choctaws, who are determined on winding up their alleged government. But these citizenship duties are craftily brought forth and given great prominence as matters of urgent consequence, when in truth and in fact, their exploitation have no other purpose whatever than the selfish one of depriving the Mississippi Choctaws of their rights in order to enlarge the per capita share of land and money of the western Choctaws. It would seem more fair to urge the duties of citizenship against the Mississippi Choctaws were it not first, that the Choctaw Nation is confessedly moribund and does not need the citizenship duties of the Mississippi Choctaws;

Second, were it not for the utter insincerity of the demand and that the western Choctaws having declared the Mississippi Choctaws unable to comply with the imposed condition of removal, because of extreme poverty and

Third, because the western Choctaws well know the fact that the Mississippi Choctaws bought and paid for their absolution from such duties, when they consented to the Treaty of 1830. The condition which now they desire to impose is most unjust and cannot be characterized as honest or sincere. The Choctaws have no right to ask it, under the treaty; they do not want it as they pretend, and know the Mississippi Choctaws are too poor to grant it. Why do they seek to impose such conditions except as an artful

means of depriving their impoverished brethren and seizing the entire inheritance?

It has been argued on behalf of the western Choctaws that because the treaty recites that the land sold the Choctaws "shall belong to them while they shall exist as a Nation and live on it," or "shall revert to the United States if said Indians and their heirs become extinct or abandon the same," that therefore any Indian not living on the land is guilty of constructive abandonment and loses his portion. If there were any force in this argument, such abandonment would cause the land so abandoned to revert to the United States, a construction the Choctaw Nation certainly is not willing to concede. The western Choctaws who argue thus wish the land thus alleged to be abandoned in this manner to revert to the Choctaw Nation or to the individuals composing it, as they are about to distribute their lands and have agreed to do so. This provision of abandonment, due to the Act of Congress of May 28, 1830, was simply to declare on the property an escheat in favor of the sovereign in the event of the extinction of the grantee or abandonment by the grantee. It never intended to regulate the internal affairs of the guarantee or to relate to the individual Indian as such, and if it applied at all would operate solely in favor of the United States, in whose express interest it was made, and not in favor of the Choctaw Nation. This is manifest, and that this argument was advanced indicates the extremity to which the western Choctaws are driven in order to find means of evading their solemn declaration of December 24, 1889, that the Mississippi Choctaws are entitled to all the rights of Choctaw citizenship.

The premises considered, the Mississippi Choctaws having bought and paid for the right of residence in Mississippi, and having expressly stipulated that it should never

operate to lose them the privilege and property right of Choctaw citizenship, such right having been freely and fully conceded by the Choctaw Nation and by its authorities, as late, certainly, as December 24, 1889, and the Mississippi Choctaws having never relinquished their rights and having never abandoned their rights, and having never been a party to any treaty by which such rights have been modified, now earnestly and respectfully insist upon their full recognition by your Honorable Commission, as the representatives of the United States Government, and request you, as such representatives, to convey this declaration to the Congress of the United States and to the President thereof.

With profound respect, they desire to give notice by you and through you to the Government of the United States that the Mississippi Choctaws are entitled to these rights, and that if the Government consents to any action depriving them of these rights, after this formal notice, the Government of the United States will make itself responsible to the Mississippi Choctaws for such deprivation and that the Mississippi Choctaws will appeal to the Government itself for proper relief, in the proper manner, under the usual methods provided by the Government for the adjustment of such claims, to the full extent of the damage which may be done to the Mississippi Choctaws by the dispersion and distribution of their property over their protest.

With sentiments of the most distinguished consideration, I have the honor to remain, on behalf of the Mississippi Choctaws,

Your faithful and obedient servant,

C. F. WINTON,
Counsel.

ROBT. L. OWEN,
Counsel.

HOUSE OF REPRESENTATIVES

54TH CONGRESS, 2d Session

REPORT No. 3080

MISSISSIPPI CHOCTAWS

March 3, 1897.—Referred to the House Calendar and ordered to be printed

Mr. ALLEN, of Mississippi, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 10372.]

The Committee on Indian Affairs, to whom was referred House bill 10372, respectfully report the same back with a recommendation that it do pass, and, with reference to the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, report that by the fourteenth article of the treaty of 1830 it was provided that such Choctaws might become citizens of Mississippi, have reservations, and still it was expressly provided in said article that they should "not lose the privilege of a Choctaw citizen" except, as an offset to such reservations in Mississippi, they were not to have any interest in the annuity even if they should remove to the western Choctaw Nation.

Your committee further find that the passage of the treaty of 1830 depended on such fourteenth article. (See the closing lines of Greenwood Leflore's deposition, copy herewith.)

The Choctaw Nation west concedes that these people are entitled to all the rights and privileges of citizenship in the Choctaw Nation and memorialized Congress to that

effect December 24, 1889 (copy herewith). The treaty of 1866 appears to contemplate that the Mississippi Choctaws shall be required within five years after allotment is decided on to move to the Indian Territory and give up the right of residence in Mississippi, which they had previously purchased by the treaty of 1830. The Commissioner of Indian Affairs reports that he finds no provision in any of the treaties by which the Choctaws in Mississippi relinquish the right of Choctaw citizenship under the fourteenth article of 1830 or otherwise, and they were not parties to treaties subsequent to 1830 (copy herewith).

Your committee therefore find that the Mississippi Choctaws expressly retained their rights as Choctaw citizens with the express provision that they should be allowed to reside in Mississippi, and that they have never relinquished this right thus established by treaty, and cannot be justly deprived thereof without their consent.

To prevent fraudulent claims your committee think that no person should be recognized as a Choctaw citizen whose grandparent was not at least a half-blood Choctaw. The Choctaw law requires one-eighth Choctaw blood to entitle them to the rights of Choctaw citizens (copy of act herewith).

Your committee therefore recommend that the bill do pass.

[Bill XII.]

AN ACT entitled an act defining the quantity of blood necessary for citizenship.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That hereafter all persons noncitizens of the Choctaw Nation making or presenting to the general council petitions for rights of Choctaws in this nation shall be required to have one-eighth Choctaw blood

and shall be required to prove the same by competent testimony.

SEC. 2. *Be it enacted*, That all applicants for rights in this nation shall prove their mixture of blood to be white and Indian.

SEC. 3. *Be it further enacted*, That no persons convicted of any felony or high crime shall be admitted to rights of citizenship within this nation.

SEC. 4. *Be it further enacted*, That this act shall not be construed to affect persons within the limits of the Choctaw Nation now enjoying the rights of citizenship.

SEC. 5. *Be it further enacted*, That this act take effect and be in force from and after its passage.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

Washington, D. C., February 15, 1897.

The foregoing is a correct copy of a law of the Choctaw Nation "defining the quantity of blood necessary for citizenship" as the same appears printed in a volume of the "Laws of the Choctaw Nation in English and Choctaw, from 1886 to 1891, inclusive," now in the possession of this office.

THOS. P. SMITH,
Acting Commissioner.

[SENATE DOCUMENT No. 129, Fifty-fourth Congress, second session.]

DEPARTMENT OF THE INTERIOR,
Washington, February 15, 1897.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate, dated 11th instant, viz.:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of

the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississipp Choctaws were parties to any subsequent Choctaw treaty, or have ever executed a relinquishment of their right of Choctaw citizenship."

In response thereto I transmit herewith copy of a communication of 15th instant from the Commissioner of Indian Affairs and accompanying papers.

As to the question of whether or not the Mississippi Choctaws were parties to any subsequent treaty to that of 1830, or have ever executed a relinquishment of their rights of Choctaw citizenship, the Commissioner says that four treaties in which the Choctaw Nation has been interested have been entered into since that of 1830, but that he cannot find in any of them anything to indicate whether the Choctaws in Mississippi were a party to any of them as a distinct faction or otherwise; neither does he find any provision by which the Choctaw Indians in Mississippi relinquish any rights of Choctaw citizenship they may have acquired under the fourteenth article of 1830, or otherwise.

Very respectfully,

D. R. FRANCIS,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 15, 1897.

SIR: I am in receipt, by Department reference for immediate report, of a resolution of the Senate calling for certain

information relative to the Choctaws in Mississippi, as follows:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

In reply I have the honor to inclose a copy of the memorial of the Choctaw Nation adopted by the legislature of that Nation and approved by its principal chief on December 24, 1889, said memorial relating to the Mississippi Choctaws.

I also inclose a copy of the deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, taken on February 24, 1843, before United States Commissioners John F. H. Claiborne and Ralph Graves, relative to the importance of the fourteenth article of the Choctaw treaty of 1830 (7 Stat. L., 333).

I also inclose an excerpt from a report made by United States Commissioners J. Murray and P. D. Vroom to the President of the United States on July 31, 1838, in which they state that in a great number of cases Choctaws in Mississippi were forced to remove from reservations granted them under the fourteenth article of the treaty above mentioned. These last two named copies are made from the

printed record of the Court of Claims in Case No. 12742, "The Choctaw Nation of Indians v. The United States."

On account of the limited time within which I have to make this report, I have not been able to search the files of this office for the original of the report of the Commissioners from which these copies are taken.

As to the question of whether or not the Mississippi Choctaws were parties to any subsequent treaty to that of 1830, or have ever executed a relinquishment of their rights of Choctaw citizenship, I have to state that four treaties in which the Choctaw Nation has been interested have been entered into since that of 1830, as follows:

Treaty of 1837 (11 Stat. L., 573), by which the Chickasaws were permitted to form a district in the Choctaw country in the Indian Territory, and certain adjustments of rights between the two nations in the lands ceded to the Choctaws prior thereto were accomplished.

The treaty of November 4, 1854 (10 Stat. L., 1116), by which the boundary line between the Choctaw and Chickasaw districts in the Choctaw Nation was provided to be run.

The treaty of 1855 (11 Stat. L., 611), entered into for the purpose of readjusting the relations between the Choctaw and Chickasaw Nations, and the treaty of 1866 (14 Stat. L., 769), readjusting the relations of the Choctaw and Chickasaw Nations with the United States after the civil law.

There is nothing that I can find in any of these treaties to indicate whether the Choctaws in Mississippi were a party to any of them as a distinct faction or otherwise. These treaties were negotiated with the Choctaw and Chickasaw nations as bodies politic, and there is no recognition of any separate factions of either of said nations.

Neither do I find any provision in any of said treaties by which the Choctaw Indians in Mississippi relinquish any rights of Choctaw citizenship they may have acquired under the fourteenth article of 1830 or otherwise.

Very respectfully, your obedient servant,

THOS. P. SMITH, *Acting Commissioner.*

The SECRETARY OF THE INTERIOR.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said States; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

Be it resolved by the general council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation.

The national secretary is hereby instructed to furnish a certified copy of this memorial each to the Speaker of the House of Representatives of the United States, the President of the Senate of the United States, and the Commissioner of Indians Affairs, with the request that they do all they can to secure the accomplishment of the object of this memorial; and this resolution shall take effect and be in force from and after its passage.

Approved December 24, 1889.

B. F. SMALLWOOD, *P. C. C. N.*

This is to certify that the foregoing is a true and correct copy of the resolution of the general council of the Choctaw Nation passed and approved in extra session in December, 1889.

Witness my hand and the great seal of the Choctaw Nation this 30th day of December, A. D. 1889.

[SEAL] J. B. JACKSON,
National Secretary Choctaw Nation.

BOARD OF CHOCTAW COMMISSIONERS,
Hopahka, February 24, 1843.

Direct interrogatories to be propounded to Greenwood Leflore, a witness on the part of the United States, sum-

moned at the instance of Messrs. Poindexter and Kirksey, on their suggestion that many of the claims presented by Choctaws for the consideration of this Board are fraudulent and void, to be used as evidence in the investigation of said claims.

First interrogatory. Have you any interest whatever, either as claimant, agent of claimants, or otherwise, in any claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, which were presented before the former Board of Commissioners, or which have been presented or are to be presented for the consideration of this Board?

Second interrogatory. Do you know of any frauds committed or attempted to be committed upon the Government of the United States by any Indian or class of Indians or their agents in cases of such claims?

Third interrogatory. Do you know or have you heard of any Indian who has ever removed to the Choctaw country west of Mississippi and has since returned to the country ceded by the treaty of 1830 and is now residing here? If you do, give us his name, and describe him so particularly, if you can, that this Board may be able to recognize him should he come before them in person; and if any such person be dead give us his name and the names of his family and relations, so that a claim in behalf of his heirs may be detected.

Fourth interrogatory. Do you know how many Indians or heads of families there were who applied or offered to apply for the benefit of the fourteenth article of the treaty?

Fifth interrogatory. Were you not one of the chiefs who negotiated this treaty on the part of the Choctaws, and did you not make yourself acquainted with the extent of the benefits realized by your people from most of its provisions?

JOHN F. H. CLAIBORNE,
RALPH GRAVES,
Commissioners.

The answers of Greenwood Leflore to the interrogations propounded on his direct examination before the Board

of Commissioners sitting at Hopahker, as a witness on the part of the United States, summoned at the instance of Messrs. Poindexter and Kirksey, on a suggestion that many of the claims presented by Choctaws for the consideration of this Board are fraudulent and void, to be used as evidence in the investigation of said claims.

To the first interrogatory, I answer that I have no interest whatever in any claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, which were presented before the former Board of Commissioners, or which have been presented or are to be presented for the consideration of this Board. I was provided for by the supplement of the treaty, and have received from Government a patent for my land. I was also the purchaser of two or three small reservations under the nineteenth article, about which there has never been any difficulty. I have never had anything to do with any claims under the fourteenth article, nor with any under the nineteenth article, which would come before this Board.

To the second interrogatory, I answer that I do not know of any frauds committed or attempted to be committed upon the Government of the United States by any Indian or class of Indians or their agents in cases of such claims.

To the third interrogatory, I answer that I do not know, nor have I ever heard, so far as I can now recollect, of any persons who ever removed to the Choctaw country west of Mississippi and have since returned to the country ceded by the treaty of 1830, and are now residing here except John F. Price, William Leflore and Anthony Turnbull. The first is a white man who had a Choctaw family; the second is my brother, and the third is a mixed-blood Choctaw. The first never made a claim for land, not being entitled to a reservation under any provision of the treaty, and the other two were provided for, one by the supplement, and the other by the nineteenth article, had their lands reserved, and sold them before their emigration west. I can recollect no others, and do not believe I ever heard of any others, and none of them can be claimants before the present board.

To the fourth interrogatory, I answer that I do not know

how many Indians or heads of families there were who applied or offered to apply for the benefit of the fourteenth article of the treaty.

To the fifth interrogatory I answer that I was one of the chiefs who negotiated this treaty on the part of the Choctaws, and am sorry to say that the benefits realized from it by my people were by no means equal to what I had a right to expect, nor to what they were justly entitled by the stipulations of the treaty on the part of the Government. The treaty was made at the urgent solicitations of the commissioners of the Government, and upon their abundant assurances that its stipulations would be faithfully carried out.

Confiding in these assurances and in the honor of Government to comply with the treaty, if it should be ratified at Washington, and conceiving it, under the circumstances, a measure of policy, if not of necessity, so far as the Choctaws were concerned, I urged it upon my people in the face of a strong opposition, which I finally determined, if possible, to remove by suggestion the insertion of the fourteenth article. This article was accordingly inserted, and believing it removed the principal objection to the treaty, I signed it myself and procured for it the support of many who were previously hesitating and undetermined. After the treaty was ratified I was active in urging forward the emigration of the people, and induced most of those in the part of my district where I resided to remove west. I think there were very few in the vicinity of my residence who applied for the benefit of the fourteenth article, and the most of them, I think, were duly registered and got their lands reserved.

This article was inserted to satisfy those in the southern part of my district and other parts of the Choctaw country who were opposed to the treaty and were inimical to me from an impression which prevailed among them that I wished to sell their country and force them to go west. After the treaty I did not consider myself any longer chief, and as I was engaged in preparing the people for the first emigration, and actually accompanied it, my intercourse with the Indians was confined to those in my part of the

country who sustained me in my course and were preparing to remove west, and I never troubled myself about the course pursued by those who had been opposed to my measures, had rejected my advice and were determined to remain in the ceded country. I do not, of course, know how many of them applied for the benefit of the fourteenth article.

Before closing my answer to this interrogatory I think it proper to state that about three years after the treaty I was present at Columbus during the excitement which arose there at the time of the land sales about the contingent locations of the fourteenth article claimants, and hearing a remark made by one of the agents of these claimants in a public speech to a large assembly of people, charging the chiefs who had made this treaty with bribery and corruption, I arose after he sat down and retorted the charge of fraud in as severe language as I could command. I was excited, and might have said more than was proper; but I felt, in the absence of any positive knowledge on the subject, that I had a right to impute any motives to one who could make such a serious and unfounded charge affecting my character as one of the chiefs who had been mainly instrumental in making the treaty. I knew that the locating agent, who lived in my section of country, had been furnished with a list containing but few names of persons registered under the fourteenth article of the treaty, but did not at that time know that many had applied to the registering agent for the benefit of this article whose applications had been rejected.

I have never since then taken any pains to inform myself particularly about their claims, and I do not know how many received the benefit of this article, or, being entitled to the benefit of it, failed to realize it. I would also add that the commissioners on the part of the United States went to the ground at Dancing Rabbit Creek much prejudiced against me, and would have no intercourse with me. They believed they could make a treaty with the other chiefs without my aid, and attempted to do so. After ten or twelve days of fruitless negotiation with them they failed entirely to make any treaty. The commissioners then came

to me and made many apologies for their neglect of me, saying they had been deceived and misled in regard to me by many misrepresentations, and then solicited me to enter into negotiations with them. I then told them if they would embrace in the treaty such provisions and articles which I suggested, the fourteenth article being one of them, I would undertake to make a treaty in two days. They agreed to the articles I suggested, and in twenty-four hours I had the treaty made.

GREENWOOD LEFLORE.

Sworn to and subscribed before us, at Hopahka, this 24th February, 1843.

JOHN F. H. CLAIBORNE,
RALPH GRAVES.

To the President of the United States.

SIR: * * * In all cases where the claimant has been actually expelled from his possession within the five years, or in which the land he occuped had been sold by the Government and surrendered to the purchaser, or where the claimant died in possession, the board have considered the cases as standing on the same ground as cases of continued residence, and have allowed them.

It is proper also to state that since the board received a copy of the supplemental law they are not aware that any case has been presented to them in which the claimant has removed west of the Mississippi; a few such cases had been heard before, and, as they were upon the records, the board have thought it proper to report them with the rest.

There are many cases also in which claimants have removed from the lands occupied by them at the time of the treaty in consequence of the settlement of the whites in their neighborhood; this and the consequences naturally resulting from it, and the proofs offered of its effects upon their minds, have induced the board to recommend such cases to Congress for allowance.

The Choctaw Indians are shy and reserved in their intercourse with the whites, and do not readily mix with them;

it is proved in a great number of cases that they have been most wantonly abused and ill treated by them, and that they could not live in peace in the same neighborhood. The large stocks of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them when they left home on their necessary hunting expeditions or to seek employment in picking cotton, etc. Under these circumstances they were compelled in a great number of cases to remove.

It is in proof also that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports. They well knew, however, from bitter experience, that whether true or false, they were at the mercy of their white neighbors. The instances are not rare, as the evidence abundantly shows, in which families have been wantonly driven from their homes, and have for several years been wanderers, living about in all seasons in open camps, and seeking a precarious subsistence, which scarcely sufficied to keep them alive.

* * * * *

All of which is respectfully submitted.

J. MURRAY.

P. D. VROOM.

WASHINGTON CITY, July 31, 1838.

HOUSE OF REPRESENTATIVES

55TH CONGRESS, 2d Session

DOCUMENT No. 274

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES

LETTER

from

THE SECRETARY OF THE INTERIOR

Transmitting

A Report of the Commission to the Five Civilized Tribes Relative to the Mississippi Choctaws

FEBRUARY 3, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1898.

SIR: I have the honor to transmit herewith a copy of a report of the Commission to the Five Civilized Tribes, relative to the Mississippi Choctaws, made in pursuance of the following provision contained in the Indian appropriation act of June 7, 1897:

That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.

Very respectfully,

C. N. BLISS, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES UPON THE QUESTION "WHETHER THE MISSISSIPPI CHOCTAWS UNDER THEIR TREATIES ARE NOT ENTITLED TO ALL THE RIGHTS OF CHOCTAW CITIZENSHIP, EXCEPT AN INTEREST IN THE CHOCTAW ANNUITIES," REQUIRED BY ACT OF CONGRESS, APPROVED JUNE 7, 1897.

To the Congress of the United States:

The Commission to the Five Civilized Tribes were required by act approved June 7, 1897, to—

Examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.

The commission has attended to that duty, and make the following

REPORT

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830, under which the Choctaws obtained their present reservation in the Indian Territory. There has never been a census taken of them, but they are estimated to number at the present time about twelve hundred. These are represented to be a poor and feeble band, somewhat scattered in different parts of the State of Mississippi, but located mostly in the counties of Neshoba, Newton, Leake, Scott and Winston. They claim the right to continue their residence and political status in Mississippi as they and those from whom they descended have done for sixty-five years, and still are entitled to enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities. This claim is based on

the fourteenth article of said treaty, which is in these words:

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity.

What their political status is in the State of Mississippi is defined in this fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitle them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years, with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the State. Their ancestors having done this, they claim, under the concluding clause of said article, that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the

Indian Territory, except their annuities. This clause upon which the claim rests is in these words:

Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it.

No fact is better established than this, that the leading motive, if not the only one, on the part of the United States, was to get the Choctaws out of Mississippi and into what is now the Indian Territory. They accordingly provided in the second article of the treaty, among other things, that the Choctaws should *live on the land* ceded to them by it in the Indian Territory. That article is in these words:

ARTICLE 2. The United States under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it (here follows a description of the land). The grant to be executed as soon as the present treaty shall be ratified.

And the Choctaws agree in the third article to remove *all* their people to this territory during the years 1831, 1832 and 1833.

Now, to construe the concluding clause of the fourteenth article to mean an offer to those who refuse to go with their brethren to the new territory an equal share in the new lands with those who go and the additional fee simple

of 640 acres of land in Mississippi and citizenship if they do not go is to offer a bounty to those who refuse to go, and would defeat the very purpose of the treaty. Not one would have gone when offered so much better terms for staying. It is well known that the Choctaws were very reluctant to enter into this treaty at all, because a portion of them—the ancestors of these claimants—refused to leave with the main body, and the treaty was not executed till the provisions of the fourteenth article were made for those unwilling to leave with their brethren. But the United States did not cease its original purpose to secure the removal of them all to the new country, even those provided for in the fourteenth article. They, therefore, inserted the concluding clause to that article to the effect of a continuing offer and pledge, that if they did ever *"remove"*—that is, if they ever changed their minds and concluded to remove—the fact that they had been freeholders and citizens of Mississippi should not bar them out of Choctaw citizenship, but that they should share like all the rest in everything but the annuities. Thus construed the clause is a standing inducement to those Indians to remove in accordance with the purpose of the treaty instead of a standing bounty to remain and thus thwart that purpose.

In addition to the condition which entered into the title that the grantees must "live on it" or lose it, the nature of the title was such that these claimants could derive no benefit from it without living on it, and by remaining in Mississippi it would be worthless to them. It is a territory in common, and has been held as such from that day, 1830, till now. Now, no tenant in common, who voluntarily leaves the common property to the occupancy of his cotenants, can ever claim of them any of the fruits of its use. So that these Mississippi Choctaws, if they are co

tenants with the resident Choctaws in these lands in the Indian Territory, must first go there and occupy them with their cotenants or forego any use of them.

Another condition of this title is that the grantees shall not only "live upon it," but if the Choctaw Nation ceases to exist the title is lost. If all the Choctaws should follow the example of these Mississippi Choctaws and remain residents and citizens of Mississippi, it would *ipso facto* cease to exist as a nation and the title be lost. It is impossible to conceive that the Choctaw Nation itself, as well as the United States, entered into this fourteenth article with any intention of enabling them so to do.

As further evidence that both parties to this treaty understood that they had created a title to be held in common by the members of the tribe alone, in which no one not a member could have any interest, the United States and the Choctaws entered into a treaty in 1855 in respect to the title to those lands (U. S. Stats., 11, p. 612), the first article of which is in these words:

ARTICLE I. And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Although it is true that any vested right of the Mississippi Choctaws in this land could not be affected by any treaty to which they were not a party, attention is called to this article for the double purpose of showing that both

the United States and the Choctaw Nation have from the beginning held that the title has always been in the members of the tribe alone, and is now so fixed that no one else but members can share in it. The treaty uses the same language in the *outset* as is used in the treaty of 1830, containing the fourteenth article, on which the present claim rests. It says, like that treaty, that it is entered into "pursuant to an act of Congress approved May 28, 1830," and then declares that—

> the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however*, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

There can be no longer doubt that the present title is in the members of the tribes alone, and that the United States has pledged itself to so maintain it, and that it so does in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member of one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen.

If this land should be ultimately allotted, any allotment to other than a citizen would come in direct conflict not only

with the terms of the treaty title lost to the whole system of the Choctaw government from the beginning. By the treaty, the allottee must be a member of either the Choctaw or Chickasaw tribes. He can, being a stranger, neither occupy nor sell his allotment, for by the treaty all strangers are to be kept out of the territory, and the land is to be sold to no one except with the consent of both tribes.

This historical review of the acquisition of this Territory by the Choctaw Nation, and its subsequent legal relations to it, makes it clear, in the opinion of this commission, that the Mississippi Choctaws are not, under their treaties, entitled to "all the rights of Choctaw citizenship except an interest in the Choctaw annuities," and still continue their residence and citizenship in the State of Mississippi.

What, then, are "the privileges of a Choctaw citizen," secured to them by the fourteenth article of the treaty of 1830? That article, after having secured to those unwilling to remove with their brethren to the Indian Territory 640 acres of land and enrollment and citizenship in the State of Mississippi, added this further clause:

> Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

The commission are of the opinion that this clause was intended to offer a further inducement to those Indians to follow at some future time their brethren and join them in their new home, and that the true construction of it is that the door of admission shall be kept open to them, and if they ever remove this stay and citizenship in Mississippi shall not bar them out, but that, notwithstanding it, they shall be admitted to all the privileges of Choctaw citizenship equally with all others, save only a share in their

annuity. This construction finds further corroboration in the treaty of 1866 (14th Statutes at Large) between the United States and the Choctaws and Chickasaws concerning the title to this same territory. In this treaty, for the first time, the possibility of an allotment of these lands in severalty to the members of the tribes at some time in the future was recognized. It was, therefore, provided in this treaty that whenever the tribes desired it such allotment among their members should take place, and at great detail the manner in which it was to be done was set forth. The treaty then provided that before it did take place notice should be given—

not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof.

There can be no doubt that this provision was inserted for the special benefit of those claiming to enjoy the rights of a Choctaw citizen under this fourteenth article of the treaty of 1830, many of those Choctaws having wandered away from Mississippi into the other States mentioned.

It was a notice to them that these lands were about to be allotted to *members* of the tribes, and if they desired to avail themselves of a share in the allotment they must make themselves such members by coming from "outside" and join their brethren in the common citizenship of the nation.

The terms upon which each applicant can avail himself of this opportunity are clear and unequivocal. He must satisfy the register of his intention to become a bona fide resident in the Territory within five years of the date of his application before he can select his allotment. And a failure to remove into said nation and to occupy and commence improvement on the land so occupied, within the time specified, forfeits altogether the selection.

This proviso needs no explanation. The United States and the Choctaws have affixed it to the title, and those claiming the benefit of the 14th article must conform to it or lose their rights.

It follows, therefore, from this reasoning, as well as from the historical review already recited, and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the "privileges of a Choctaw citizen" any person claiming to be a descendant of those Choctaws who were provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant, and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he cannot claim as a right the "privilege of a Choctaw citizen."

To the claim, as thus defined, the Choctaw Nation has

always acceded, and has manifested in many ways its willingness to take into its citizenship any one or all of the Mississippi Choctaws who would leave their residence and citizenship in that State and join in good faith their brethren in the Territory, with participation in all the privileges of such citizenship, save only a share in their annuities, for which an equivalent has been given in the grant of land and citizenship in Mississippi.

The national council, in view of the poverty and inability of these Choctaws to remove at their own expense to the Territory, memorialized Congress on December 9, 1889, to make provision for their removal, by the adoption of the following resolution:

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said State; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

Be it resolved by the General Council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation, etc.

It is a significant fact that this claim on the part of the Mississippi Choctaws to all the privileges of a citizen in the Choctaw Nation, and still retain their residence and citizenship in the State of Mississippi, is a very recent one. There is no evidence known to the commission that the early Mississippi Choctaws ever made such a claim. In later years the Choctaws and Chickasaws have sold at different times large portions of their territory to the United States, and the proceeds, amounting in the aggregate to

several millions of dollars, have been distributed *per capita* among the Choctaw and Chickasaw citizens. If this claim as now presented is the correct one, these Mississippi Choctaws were entitled to their *per capita* share in all the money equally with all other citizens of the nation, yet not a dollar of it was ever paid to them, or claimed by them.

This claim to participate in the privileges of a Choctaw citizen and still retain a residence and citizenship in Mississippi has recently come before the United States Court, in the third district in the Indian Territory, in the case of Jack Amos *et al. vs.* The Choctaw Nation, No. 158 on the docket of that court. The case was an appeal of Mississippi Choctaws from a refusal of this commission to place them on the rolls of Choctaw citizenship. The court, Judge Wm. H. H. Clayton, overruled the appeal and confirmed the judgment of this commission, denying such enrollment, in a very elaborate and exhaustive opinion.

If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission, or to create a new tribunal for that purpose.

In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the

Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. They therefore suggest that, in proper form, jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
A. S. MCKENNON,
Commissioners.

Washington, D. C., January 28, 1898.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
1st Session

DOCUMENT
No. 426

MISSISSIPPI CHOCTAWS

FEBRUARY 13, 1900.—Ordered to be printed.

Mr. WILLIAMS, of Mississippi, introduced the following

PETITION OF THE MISSISSIPPI CHOCTAWS

February 7, 1900.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Your humble petitioners are full-blood Choctaw Indians, speaking the Choctaw language, citizens of the Choctaw Nation, residing in Mississippi.

They are entitled to every privilege of a Choctaw citizen,

except the Choctaw annuity, under the treaty of 1830. This claim is based on the fourteenth article of the treaty made by us with the United States September 27, 1830, which is in these words:

ART. 14. Each Choctaw head of a family, being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter-section to such child as may be under ten years of age, to adjoin the location of the parents. If they reside upon said lands, intending to become citizens of States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article *shall not lose the privilege of a Choctaw citizen*, but if they ever "remove are not entitled to any portion of the Choctaw annuity."

We bought and paid for the right of residence in Mississippi as well as the privilege of Choctaw citizenship, reserved to us in that treaty.

Our rights are properly set forth in a report from the Committee on Indian Affairs of the House of Representatives, which is made Exhibit 1 hereto.

Our brothers of the Choctaw Nation memorialized Congress December 4, 1889, declaring that we were entitled to all the rights and privileges of citizenship in the Choctaw Nation. (See p. 3, Exhibit 1.)

The treaty of 1830 could not have been passed except

for the pledge to us in the fourteenth article. (See pp. 1 and 6, Exhibit 1.)

Congress on June 7, 1897, passed the following act, to wit:

That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities.

On February 2, 1898, this report was made, containing the following words:

If, in accordance with this conclusion of the commission these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of Choctaw citizens save participation in the annuities, still if any person presents hmself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830.

We feel deeply aggrieved that the treaty by which we retained "the privilege of a Choctaw citizen" should now be construed to mean "the privilege of acquiring the privilege of a Choctaw citizen by removal." This is a forced construction. It compels us to give up the right to "remain and become a citizen of the States" which we bought and paid for in the treaty of 1830.

On June 28, 1898, in the Curtis bill, Congress passed the following act, to wit:

Said commission shall have authority to determine the

identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior.

On March, 10, 1899, the Commission to the Five Civilized Tribes reported a roll containing the names of most of our people under this direction of the act of Congress, and on August 10, 1899, the Secretary of the Interior decided that—

Prima facie, the persons appearing on said schedule, containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commission for the approval of the Secretary. (Last paragraph, Exhibit 3.)

The only question and controversy as to our right is whether or not the fourteenth article requires us to give up the "privilege of the Choctaw citizen" or give up the right to "remain and become a citizen of the States." We bought both rights and now are required to give up one for the other. We must give up our Mississippi homes or give up our Choctaw rights, although we bought both and expressly retained both, by the plain language of the treaty. (See Exhibit 4.)

We petition Congress, first, to give us our rights by construing this treaty in our favor, for the reasons above set forth. The proposition is so simple we ought not to be compelled, poor as we are, to go into the courts, with the expense and delay incident to such a method of settlement. But in the event that Congress believes that there is any

reasonable doubt in the plain language of this treaty, then we petition Congress—

Second, to send us speedily to the courts, where this controversy may be settled without delay, and that while this suit is pending we shall have the right to exercise our right of selection as any other Choctaw citizens, subject to the final determination of the courts. We ask this for the reason that if we have these rights we ought not to be compelled to wait until every other citizen has exercised his choice, compelling us to receive only that which nobody else cares for.

As full-blood Choctaws, speaking the Choctaw language, and being very poor, we humbly pray the magnanimous consideration of the great Congress of the greatest organized people on earth.

Your humble and obedient servants,

THE MISSISSIPPI CHOCTAWS,

By C. F. WINTON.

LOGAN, DEMOND AND HARLEY,

Attorneys for Petitioners.

EXHIBIT 2

[House Document No. 274, Fifty-fifth Congress, second session.]

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1898.

SIR: I have the honor to transmit herewith a copy of a report of the Commission to the Five Civilized Tribes, relative to the Mississippi Choctaws, made in pursuance of the following provision contained in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws

under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

Very respectfully,

C. N. BLISS, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES UPON THE QUESTION, WHETHER THE MISSISSIPPI CHOCTAWS UNDER THEIR TREATIES ARE NOT ENTITLED TO ALL THE RIGHTS OF CHOCTAW CITIZENSHIP, EXCEPT AN INTEREST IN THE CHOCTAW ANNUITIES?" REQUIRED BY ACT OF CONGRESS, APPROVED JUNE 7, 1897.

To the Congress of the United States:

The Commission to the Five Civilized Tribes were required by act approved June 7, 1897, to—

"Examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

The commission has attended to that duty, and make the following

REPORT

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830, under which the Choctaws obtained their present reservation in the Indian Territory. There has never been a census taken of them, but they are estimated to number at the present time about 1,200. These are represented to be a poor and feeble band, somewhat scattered in different parts of the State of Mississippi, but located mostly in the counties of Neshoba, Newton, Leake, Scott and Winston. They claim the right to continue their residence and political

status in Mississippi, as they and those from whom they descended have done for sixty-five years, and still are entitled to enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities. This claim is based on the fourteenth article of said treaty, which is in these words:

"ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity."

What their political status is in the State of Mississippi is defined in this fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitle them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years, with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the States. Their ancestors having done this, they claim, under the concluding clause of said article, that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the

Indian Territory, except their annuities. This clause upon which the claim rests is in these words:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it.

No fact is better established than this, that the leading motive, if not the only one, on the part of the United States, was to get the Choctaws out of Mississippi and into what is now the Indian Territory. They accordingly provided in the second article of the treaty, among other things, that the Choctaws should *live on the land* ceded to them by it in the Indian Territory. That article is in these words:

"ARTICLE 2. The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it (here follows a description of the land). The grant to be executed as soon as the present treaty shall be ratified."

And the Choctaws agree in the third article to remove *all* their people to this territory during the years 1831, 1832 and 1833.

Now, to construe the concluding clause of the fourteenth article to mean an offer to those who refuse to go with their brethren to the new territory an equal share in the new lands with those who go, and the additional fee simple of 640 acres of land in Mississippi and citizenship if they do not go, is to offer a bounty to those who refuse to go, and would defeat the very purpose of the treaty. Not one would have gone when offered so much better terms for staying. It is well known that the Choctaws were very reluctant to enter into this treaty at all, because a portion of them—the ancestors of these claimants—refused to leave

with the main body, and the treaty was not executed till the provisions of the fourteenth article were made for those unwilling to leave with their brethren. But the United States did not cease its original purpose to secure the removal of them all to the new country, even those provided for in the fourteenth article. They therefore inserted the concluding clause to that article, to the effect of a continuing offer and pledge, that if they did ever "remove"—that is, if they ever changed their minds and concluded to remove—the fact that they had been freeholders and citizens of Mississippi should not bar them out of Choctaw citizenship, but that they should share like all the rest in everything but the annuities. Thus construed the clause is a standing inducement to those Indians to remove, in accordance with the purpose of the treaty, instead of a standing bounty to remain and thus thwart that purpose.

In addition to the condition which entered into the title that the grantees must "live on it" or lose it, the nature of the title was such that these claimants could derive no benefit from it without living on it, and by remaining in Mississippi it would be worthless to them. It is a territory in common, and has been held as such from that day, 1830, till now. Now no tenant in common, who voluntarily leaves the common property to the occupancy of his cotenants, can ever claim of them any of the fruits of its use. So that these Mississippi Choctaws, if they are cotenants with the resident Choctaws in these lands in the Indian Territory, must first go there and occupy them with their cotenants or forego any use of them.

Another condition of this title is that the grantees shall not only "live upon it," but if the Choctaw Nation ceases to exist the title is lost. If all the Choctaws should follow the example of these Mississippi Choctaws, and remain residents and citizens of Mississippi, it would *ipso facto* cease to exist as a nation and the title be lost. It is impossible to conceive that the Choctaw Nation itself, as well as the United States, entered into this fourteenth article with any intention of enabling them so to do.

As further evidence that both parties to this treaty understood that they had created a title to be held in common

by the members of the tribe alone, in which no one not a member could have any interest, the United States and the Choctaws entered into a treaty in 1855 in respect to the title to those lands (U. S. Stats., 11, p. 612), the first article of which is in these words:

"ARTICLE 1. And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Although it is true that any vested right of the Mississippi Choctaws in this land could not be affected by any treaty to which they were not a party, attention is called to this article for the double purpose of showing that both the United States and the Choctaw Nation have from the beginning held that the title has always been in the members of the tribe alone and is now so fixed that no one else but members can share in it. The treaty uses the same language in the outset as is used in the treaty of 1830, containing the fourteenth article, on which the present claim rests. It says, like that treaty, that it is entered into "pursuant to an act of Congress approved May 28, 1830," and then declares that "the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

There can be no longer doubt that the present title is in the members of the tribes alone and that the United States

has pledged itself to so maintain it, and that it does so in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member of one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen.

If this land should be ultimately allotted, any allotment to other than a citizen would come in direct conflict not only with the terms of the treaty title, but to the whole system of the Choctaw government from the beginning. By the treaty the allottee must be a member of either the Choctaw or Chickasaw tribes. He can, being a stranger, neither occupy nor sell his allotment, for by the treaty all strangers are to be kept out of the territory, and the land is to be sold to no one except with the consent of both tribes.

This historical review of the acquisition of this territory by the Choctaw Nation and its subsequent legal relations to it makes it clear, in the opinion of this commission, that the Mississippi Choctaws are not, under their treaties, entitled to "all the rights of Choctaw citizenship except an interest in the Choctaw annuities," and still continue their residence and citizenship in the State of Mississippi.

What, then, are "the privileges of a Choctaw citizen," secured to them by the fourteenth article of the treaty of 1830? That article, after having secured to those unwilling to remove with their brethren to the Indian Territory 640 acres of land an enrollment and citizenship in the State of Mississippi, added this further clause:

"Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

The commission are of the opinion that this clause was intended to offer a further inducement to those Indians to

follow at some future time their brethren and join them in their new home, and that the true construction of it is that the door of admission shall be kept open to them, and if they ever remove, this stay and citizenship in Mississippi shall not bar them out, but that, notwithstanding it, they shall be admitted to all the privileges of Choctaw citizenship equally with all others, save only a share in their annuity. This construction finds further corroboration in the treaty of 1866 (14 Stat. L.) between the United States and the Choctaws and Chickasaws concerning the title to this same territory. In this treaty, for the first time, the possibility of an allotment of these lands in severalty to the members of the tribes at some time in the future was recognized. It was therefore provided in this treaty that whenever the tribes desired it such allotment among their members should take place, and at great detail the manner in which it was to be done was set forth. The treaty then provided that before it did take place notice should be given "not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide residents in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof."

There can be no doubt that this provision was inserted for the special benefit of those claiming to enjoy the rights of a Choctaw citizen under this fourteenth article of the treaty

of 1830, many of those Choctaws having wandered away from Mississippi into the other States mentioned. It was a notice to them that these lands were about to be allotted to members of the tribes, and if they desired to avail themselves of a share of the allotment they must make themselves such members by coming from "outside" and join their brethren in the common citizenship of the nation.

The terms upon which each applicant can avail himself of this opportunity are clear and unequivocal. He must satisfy the register of his intention to become a bona fide resident in the Territory within five years of the date of his application before he can select his allotment. And a failure to remove into said nation and to occupy and commence improvement on the land so occupied, within the time specified, forfeits altogether the selection.

This proviso needs no explanation. The United States and the Choctaws have affixed it to the title, and those claiming the benefit of the fourteenth article must conform to it or lose their rights.

It follows, therefore, from this reasoning, as well as from the historical review already recited, and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the "privileges of a Choctaw citizen" any person claiming to be a descendant of those Choctaws who were provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant, and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he cannot claim as a right the "privilege of a Choctaw citizen."

To the claim, as thus defined, the Choctaw Nation has always acceded, and has manifested in many ways its willingness to take into its citizenship any one or all of the Mississippi Choctaws who would leave their residence and citizenship in that State and join in good faith their brethren in the Territory, with participation in all the privileges

of such citizenshp, save only a share in their annuities, for which an equivalent has been given in the grant of land and citizenship in Mississippi.

The national council, in view of the poverty and inability of these Choctaws to remove at their own expense to the Territory, memorialized Congress on December 9, 1889, to make provision for their removal, by the adoption of the following resolution:

"Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

"Whereas they are denied all rights of citizenship in said States; and

"Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

"Be it resolved by the General Council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation, etc."

It is a significant fact that this claim on the part of the Mississippi Choctaws to all the privileges of a citizen in the Choctaw Nation, and still retain their residence and citizenship in the State of Mississippi, is a very recent one. There is no evidence known to the commission that the early Mississippi Choctaws ever made such a claim. In later years the Choctaws and Chickasaws have sold at different times large portions of their territory to the United States, and the proceeds, amounting in the aggregate to several millions of dollars, have been distributed per capita among the Choctaw and Chickasaw citizens. If this claim as now presented is the correct one, these Mississippi Choctaws were entitled to their per capita share in all the money equally with all other citizens of the nation, yet not a dollar of it was ever paid to them or claimed by them.

This claim to participate in the privileges of a Choctaw citizen and still retain a residence and citizenship in Mississippi has recently come before the United States Court in the third district in the Indian Territory in the case of Jack Amos *et al. v.* The Choctaw Nation, No. 158 on the

docket of that court. The case was an appeal of Mississippi Choctaws from a refusal of this commission to place them on the rolls of Choctaw citizenship. The court, Judge Wm. H. H. Clayton, overruled the appeal and confirmed the judgment of this commission, denying such enrollment in a very elaborate and exhaustive opinion.

If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose.

In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. They therefore suggest that, in proper form, jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
A. S. MCKENNON,
Commissioners.

WASHINGTON, D. C., January 28, 1898.

EXHIBIT 3

DEPARTMENT OF THE INTERIOR,
Washington, August 10, 1899.

SIR: The Department is in receipt of your communication of May 31, 1899, in which you state—

"In connection with the commission's report as to the identification of Mississippi Choctaws, forwarded this day, I have the honor to respectfully request a decision by the Department upon the following question:

"Are those persons whose names appear upon the schedule which accompanies the commission's report entitled to enrollment as Choctaw Indians and to participate in the distribution of tribal lands in Indian Territory upon their removal to the Choctaw Nation?"

On June 13th last the Acting Commissioner of Indian Affairs acknowledged the receipt of departmental letter of June 6, 1899, transmitting a report of the Commission to the Five Civilized Tribes (in duplicate) as to the identity of Choctaw Indians residing in Mississippi claiming rights in the Choctaw Nation under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, as directed in section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), for the consideration of the Indian Office, report, and recommendation.

The acting commissioner quotes that part of section 21 relative to the matter as follows:

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior."

And he states that under the provision above quoted—

"The Department is not given any jurisdiction to revise or in any way approve or disapprove the action of the commission, and the commission is given sole authority to deter-

mine the identity of the Indians in question. The situation appears to the office to be that the Commission to the Five Civilized Tribes under this clause was created a court of special jurisdiction to determine certain facts, and that from the judgment of the commission in these cases no appeal would lie to this Department, and that the Department has no duty to perform except to receive the report which the commission is required to make to the Secretary of the Interior."

The acting commissioner requested to be instructed by the Department "as to its understanding as to the purpose and intent of the law in this matter * * * that should the Department decide that it has authority under the law to review the action of the commission in identifying these people, there are no facts submitted with the reports and none of the evidence on which the commission acted is before the office, and it would be impossible for the office to give proper consideration to the case without having the whole record on which the commission acted before, and that if it is not necessary to review their action, the necessity for having this record in the office would be obviated."

Afterwards, on June 15th, the Department considered said communication from the action commissioner of the 13th of the same month, in which reference was made to the several statutory provisions relative to the duties of the commission, and also to the opinion of the Assistant Attorney-General, rendered March 17, 1899, and it was stated:

"When the rolls of said tribes shall have been completed and submitted to the Secretary for approval thereof, he will have authority, and it shall be his duty, under the authority above quoted, to see that any Mississippi Choctaws entitled to be enrolled is placed upon the roll and that anyone not entitled to be placed upon the roll whose name is found thereon shall be stricken therefrom."

And the commissioner was advised "that until the rolls are presented for approval no further action need be taken either by your (Indian) office or by the Department, unless some request therefor shall come from said commission."

On June 24th last the Commissioner of Indians Affairs inclosed said report, dated May 31, 1889, containing said

request to be advised concerning the rights of Mississippi Choctaws "upon their removal to the Choctaw Nation."

Reference is made by the commissioner to the provision contained in the act of June 7, 1898 (30 Stat., 62-83), which declares "that the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities," and also to the report of said commission, dated January 28, 1898, under said provision, submitted to Congress, in which it is stated:

"It follows, therefore, from this reasoning, as well as from the historical review already cited and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the 'privileges of a Choctaw citizen' any person claiming to be a descendant of those Choctaws who are provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such, except to a share in the annuities, and that otherwise he can not claim as a right the 'privilege of a Choctaw citizen.'" House Document 274, Fifty-fifth Congress, second session.)

It is further stated by the Commissioner that while this report was pending, the act of June 28, 1898 (30 Stat., 495), commonly called the "Curtis Act," was passed, giving said commission authority "to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, * * * and make report to the Secretary of the Interior," and he expresses the opinion that the passage by Congress of said act amounts to a ratification of the conclusion of said commission, "that the Mississippi Choctaws would be entitled to enrollment upon their removal to the

Choctaw Nation, and to participate in the benefits of the Choctaw common property, except annuities, and a direction to identify these persons in order that they may take advantage of their privileges under the law."

The Commissioner, while expressing the opinion that the Mississippi Choctaws who remained in Mississippi under article 14 of the treaty of 1830, and who remove to the Choctaw Nation now, would be entitled to enrollment as citizens of said nation and to a participation in the distribution of the property of the nation, with the exception of the annuities thereof, states:

"Whether or not the persons appearing on the schedule accompanying the report of the commission as to the identification of these Mississippi Choctaws would be entitled to such enrollment as adopted Indians, is a different question in view of the conclusion reached by the Department in its letter of June 15, 1899," above referred to.

The Department concurs in the views of the Commissioner as expressed in his said report, and further advises you that, prima facie, the persons appearing on said schedule containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commissioner for the approval of the Secretary.

A copy of the report of the Commissioner, dated June 24, 1899, is inclosed herewith.

Respectfully,

THOS. RYAN, *Acting Secretary.*

ACTING CHAIRMAN OF THE COMMISSION TO THE
FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

EXHIBIT 4.

Before the Senate Committee on Indian Affairs, in re Senate bill 1742.

MISSISSIPPI CHOCTAWS

Article 14 of the treaty of September 27, 1830, between the United States and the Choctaw Nation (7 Stats., 333) provides as follows:

."Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

Particular attention of the committee is invited to the closing sentence of this article, namely:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

This sentence is composed of two parts. The first part absolutely without qualification, preserves in those persons who claim under the article the privilege of Choctaw citizens. The other, having in mind the possibility that at some future time some of these parties, or all of them, might desire to remove to the Indian Territory, provides that if they do so remove they shall not participate in the annuity then payable to citizens of the Choctaw Nation.

The Supreme Court of the United States, in discussing property rights of citizens of the Cherokee Nation in a Delaware case, reported in volume 155 of the United States Reports, said that all the property rights of the citizens of the nation spring exclusively from citizenship. It would be a peculiar situation if it were conceded, as it must be, that the Mississippi Choctaws are citizens of the Choctaw Nation, notwithstanding their residence outside of the

nation, but are not entitled to participate in the benefits of the common property of the nation, in view of the fact that the common property is held by a tenure similar to that by which the common property of the Cherokee Nation is held. The preservation of the rights of these Mississippi Choctaws therefore preserved to them all of their rights of property as Choctaw citizens, except the right to receive any portion of the annuity then being paid to the citizens of that nation.

This being so, the Mississippi Choctaws believe and insist that in the division of the lands of the Choctaw Nation and in the division of the moneys arising from the sales of the lands of the Choctaw Nation, which came to them under and by the treaty of 1830, and previous treaties, they should be allowed to participate, although they may still remain and reside in the State of Mississippi.

The Dawes Commission, and the Interior Department, and the Congress, so far as its legislation is concerned have taken a different view of this question, as will be seen by the following statement of the transactions that have taken place concerning the rights of these Indians.

In the first place, the Committee on Indian Affairs of the House of Representatives during the second session of the Fifty-fourth Congress, reported favorably a measure directing the enrollment of these Mississippi Choctaws, but this act was not adopted by Congress. Instead of that, however, the following provision was contained in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress, whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities."

Pursuant to this legislation, the commission reported on January 28, 1898, which report was transmitted to Congress by the Secretary of the Interior on February 2, 1898. Without discussing the conclusions of fact and law as reached by the commission which led to its final conclusions as to the rights of these people, the commission held in sub-

stance that the Mississippi Choctaws have the right at any time to remove to the Indian Territory and claim participation in all the privileges of a Choctaw citizen save participation in their annuities.

At this point special attention is invited to the concluding paragraph of the report of the commission, which is as follows:

"In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. We therefore suggest that in proper form jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties."

If any action can be said to have been taken by Congress on this report, it is contained in the act of June 28, 1898, commonly called the "Curtis Act," and entitled "An act for the protection of the people of the Indian Territory, and for other purposes," wherein, in section 21, it is provided:

"Said commission shall have the authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior."

Pursuant to this provision, the Dawes Commission did identify some 1,900 persons living in Mississippi as Choctaw Indians claiming rights in the Choctaw lands under the said article 14 of the treaty of 1830, and a list of these persons was submitted to the Secretary of the Interior by the commission in a report dated March 10, 1899.

Later on the commission submitted to the Secretary of the Interior the following question:

"Are those persons whose names appear upon the schedule which accompanies the commission's report (meaning the schedule of Mississippi Choctaws) entitled to enrollment as Choctaw Indians and to participate in the distribution of

tribal lands in the Indian Territory upon their removal to the Choctaw Nation?"

The Secretary of the Interior, in a letter dated August 10, 1899, and addressed to the acting chairman of the commission, concurred in the opinion expressed by the Commissioner of Indian Affairs in a report made on the question, that the Mississippi Choctaws who remained in Mississippi under article 14 of the treaty of 1830, and who "remove to the Choctaw Nation now, would be entitled to enrollment as citizens of said nation and to a participation in the distribution of the property of the nation, with the exception of the annuities thereof," and advised the commission further that prima facie the persons appearing on the schedule submitted by said commission as "containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commission for the approval of the Secretary."

It will be seen from the foregoing that the Dawes Commission and the Interior Department positively hold that the Mississippi Choctaws would be entitled to participate in the common property of the nation on removal to the nation, with the exception of the annuities, and that the Congress apparently holds to the same conclusion, although there is nothing in article 14 which requires these Choctaws to remove to the nation in order to maintain their privilege of citizenship.

A great many of these Mississippi Choctaws do not desire to go to the Indian Territory, but they feel that they are entitled to have their share of the lands which belong to their tribe, and that the law gives them that right. They therefore ask Congress to allow them to submit to the courts the question of law whether they are compelled to move to the Indian Territory in order to enjoy the rights of property which their citizenship in that nation entitle them to enjoy.

And in this connection the attention of the committee is again invited to the concluding paragraph of the report of the Dawes Commission of January 28, 1898, wherein the commission expressly states that the matter ought to

be judicially determined and recommend that it be referred to the Court of Claims for that purpose.

With this statement of the position of the Indians interested in this bill, the question is submitted to the committee, confidently believing that the committee will give the matter careful and proper attention and will provide for these Indians in its wisdom according to the justness of their claim.

LOGAN, DEMOND AND HARLEY,
Attorneys for the Indians.

C. F. WINTON,
Of Counsel for Mississippi Choctaws.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
1st Session

REPORT
No. 475

AUTHORIZING CERTAIN SUITS IN THE COURT OF CLAIMS

MARCH 1, 1900.—Referred to the House Calendar and ordered to be printed.

MR. LITTLE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 8566.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 8566) authorizing certain suits in the Court of Claims, and for other purposes, beg leave to submit the following report, and recommend that said bill do pass, with amendments as follows:

After the word "laws," in line 4, page 1, insert the following language:

And white persons who have intermarried with Choctaw

citizens, according to Choctaw laws, and white persons who have intermarried with Chickasaw citizens, according to Chickasaw laws.

Strike out all language after the word "notion," in line 14, page 1, down to and including the word "thereto," in line 2, page 2.

And when so amended your committee recommend the passage of the bill.

The suits authorized by the first and second sections of the bill are intended to hasten the settlement of the contentions between the intermarried whites and the tribes of Indians mentioned in the bill.

The intermarried whites claim that by their marriage to members of the tribes under the laws and treaties of said tribes they are entitled to share in the funds and lands belonging to the tribes, and this is denied by the respective tribes. Your committee believe that the early settlement of this controversy is not only important to the Indian tribes, but is necessary before the final allotment of the lands in said tribes can be made. The suits involve no charge against the Government.

Sections 3 and 4 of the bill refer to the claim of the Mississippi Choctaws, and with reference to the rights of the Mississippi Choctaws the committee report that by the fourteenth article of the treaty of 1830 it was provided that Choctaws desirous of doing so might become citizens of the United States by expressing their intention to remain in that country, and at the same time it was expressly provided that they should "not lose the privilege of a Choctaw citizen," except, as an offset to reservations in Mississippi, they were not to have any interest in the Choctaw annuity even if they should remove to the Western Choctaw Nation.

This subject was considered by the Indian Committee of the House of Representatives in the Fifty-fourth Con-

gress, second session, and report made. (H. R. 3080, hereto attached and made part hereof.)

In the appropriation act of June 7, 1897, Congress made the following provision, to wit:

That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenshjp, except an interest in the Choctaw annuities.

Under this authority the Commission to the Five Civilized Tribes made their report (House Doc. 274, Fifty-fifth Congress, second session), copy hereto attached. They reported substantially that a Mississippi Choctaw has the right at any time to remove to the Indian Territory and claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, but that he should be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who conformed to the requirements of the fourteenth article of the treaty of 1830. Upon this report, by an act approved June 30, 1898, known as "An Act for the protection of the people of the Indian Territory, and for other purposes," in section 21, Congress provided as follows:

Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior. * * *

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* That nothing con-

tained in this act shall be so construed as to militate against any right or privilege which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

In accordance with this instruction the Commission to the Five Civilized Tribes made a roll of identification of these Indians, and reported the same to the Secretary of the Interior on June 6, 1899, through the Commissioner of Indian Affairs by his letter of that date. The Mississippi Choctaws insist that they should not be required to remove to the Choctaw Nation in order to participate in their pro rata share of this property. It is important to the United States, to the Choctaws and Chickasaws, and to the Mississippi Choctaws to bring this controversy to a speedy conclusion. For that reason your committee recommend that suit be authorized in the manner provided in this bill.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
2d Session

REPORT
No. 2522

TREATY RIGHTS OF MISSISSIPPI CHOCTAWS

JANUARY 29, 1901.—Referred to the House Calendar and ordered to be printed.

Mr. LITTLE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 4158.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4158) to refer the treaty rights of Missis-

sippi Choctaws for adjudication, beg leave to submit the following report, and recommend that said bill do pass without amendment.

The object of this bill is to enable the Mississippi Choctaws to assert in the Court of Claims their alleged right as citizens of the Choctaw Nation to be recognized in the partition of lands in the Indian Territory. The fourteenth article of the Dancing Rabbit treaty reads as follows:

Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so by signifying this intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon these lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity.

The Mississippi Choctaws contend that citizenship in the Choctaw Nation exists by virtue of blood, and not because of locality of residence, and that they are just as much citizens of the Choctaw Nation as any Choctaws anywhere can be, and that as such they are entitled to every right accruing to any citizen of the Choctaw Nation under the Dancing Rabbit treaty, except, of course, those rights from which they were expressly excluded by the terms of the treaty—namely, the annual annuity and the gross sum to

be paid to those who consented to go and did go to the Indian reservation. The bill does not undertake to pass upon the rights of the Mississippi Choctaws, but merely to provide them with a forum in which their claims can be adjudicated.

57TH CONGRESS 1st Session | SENATE | DOCUMENT No. 319

RIGHTS OF MISSISSIPPI CHOCTAWS IN THE CHOCTAW NATION

MEMORIAL OF THE FULL-BLOOD MISSISSIPPI CHOCTAWS RELATIVE TO THEIR RIGHTS IN THE CHOCTAW NATION

APRIL 24, 1902.—Referred to the Committee on Indian Affairs (to accompany amendment to S. 4848) and ordered to be printed

To the honorable members of the Senate and House of Representatives in Congress assembled:

Your memorialists, full-blood Mississippi Choctaws, speaking the Choctaw language, respectfully submit that on December 24, 1889, the general council of the Choctaw Nation passed the following resolution:

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all of the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said States; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation. Therefore,

Be it resolved by the general council of the Choctaw Nation assembled, That the United States Government is

hereby requested to make provisions for the emigration of said Choctaws from said States to the Choctaw Nation. (Eighth report Dawes Commission, 115.)

By the treaty of 1866 the protection of our rights was guaranteed in article 13, as follows:

ARTICLE 13. The notice required in the above article shall be given, not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation and occupy and commence an improvement on the land selected within the time aforesaid, the selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof. (Ibid, 117.)

Judge W. H. H. Clayton, United States judge for the central district of Indian Territory, in his opinion on the Jack Amos case, made the following decision:

I am disposed to the opinion, however, and will so hold that the descendants of the Mississippi Choctaws, by virtue of the fourteenth article of the treaty of 1830, are entitled to all of the rights of Choctaw citizenship, with all of the privileges and property rights incident thereto, provided they have renounced their allegiance to the sovereignty of Mississippi by moving into the Choctaw Nation in good faith, etc. (Ibid, 116.)

Judge Clayton held in the E. J. Horne case as follows:

That all Mississippi Choctaws and their descendants were entitled upon their removal to the Choctaw Nation to all the privileges of a Choctaw citizen, except to the right to participate in their annuities. This right of citizenship being conferred by the treaty, no law afterwards enacted by the Choctaw council can deprive them of that right because it would be in conflict with the treaty which confers that right to them and their descendants, without reference to the quantity of Indian blood. If they are descendants of Choctaw ancestors, it is sufficient. (Ibid, 118.)

This decision by Judge Clayton was confirmed by the Supreme Court of the United States, October term, 1898, May 15, 1899. (Ibid, 197.)

Congress on June 7, 1897, directed the Dawes Commission to examine and report to Congress whether the Mississippi Choctaws under their treaty are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities. The Dawes Commission found that they were so entitled, provided they would remove to the Choctaw-Chickasaw Nation. (Ibid, 79.)

In a report of January 28, 1898 (H. R. Doc. 274, Fifty-fifth Congress, second session, p. 6), Congress directed the Dawes Commission to identify such Mississippi Choctaws, by act of June 28, 1898. (Eighth Annual Report Dawes Commission, p. 18.) They did identify the full-blood Choctaws by a schedule submitted to the Department of the Interior May 10, 1899, containing about 1,900 names, and since that time have identified some other full-blood Choctaws in that country.

The Dawes Commission, by statute, were forbidden to receive the application of any non-resident Indians after a certain date, but an exception was made in favor of the Mississippi Choctaws. For this reason many thousand

persons have set up claims pretending they were Mississippi Choctaws, and have put in jeopardy the rights of the real Mississippi Choctaws by virtue of manifest frauds perpetrated in the name of the Mississippi Choctaws by said pretenders.

On February 7, 1901, the United States Commission to the Five Civilized Tribes; the governor of the Choctaw Nation, Hon. Gilbert T. Dukes, and the Choctaw commissioners; and the governor of the Chickasaw Nation, Hon. Douglas H. Johnson, and Chickasaw commissioners, made and entered into an agreement containing the following provision:

MISSISSIPPI CHOCTAWS

13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Choctaw Indians residing in the State of Mississippi and such full-blood Choctaw Indians as may have removed from the State of Mississippi to Indian Territory as may be identified by said Commission shall alone constitute the "Mississippi Choctaws" entitled to benefits under this agreement.

And thereupon provided that those who moved in good faith to the Choctaw-Chickasaw country should be enrolled as Mississippi Choctaws and allotted lands like other Choctaws. (H. R. Doc. 490, Fifty-sixth Congress, second session, p. 12.)

The proposed Choctaw-Chickasaw supplemental agreement (H. R. 13172) has been so ingeniously drawn as to make it impossible for the full-blood Mississippi Choctaws to secure their rights under it. By section 41 they are required, within six months after the date of the final rati-

fication of the agreement, to make bona fide settlement within the Choctaw-Chickasaw country; but the Mississippi Choctaws, in spite of the schedule submitted and the report of the United States Commission identifying them, are prevented from knowing whether they are entitled to remove, because the Interior Department has for three years withheld its approval, and under the law such schedule is not held as identification until approved by the Interior Department, according to the construction of that office. No Mississippi Choctaw knows to this day whether he is identified. If he sells his home and his property to move to the Choctaw Nation, he does so at the jeopardy of losing everything and not being received when he reaches the Choctaw Nation.

The purpose of Congress was to enable the Mississippi Choctaws to know before moving that they would be received. We therefore pray that sections 41, 42, 43 and 44, imposing onerous conditions on the Mississippi Choctaws, be struck out, and a simple, plain provision made, free from ambiguity, as follows, to wit:

MISSISSIPPI CHOCTAWS

41. All persons heretofore identified by the Commission of the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blooded Mississippi Choctaw Indians as may be identified by said Commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the "Mississippi Choctaws" entitled to benefits under this agreement.

42. All "Mississippi Choctaws," as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification, shall be enrolled by said commission upon a separate roll designated "Mis-

sissippi Choctaws;" and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws.

The provisions asked for by the full-blood Mississippi Choctaws vary in no substantial way from the reasonable requirements of the treaty itself, but eliminates technical rules and difficult requirements proposed to be imposed upon the Mississippi Choctaws without just reason. We believe the Choctaw-Chickasaw people are perfectly willing to receive all full-blood Choctaws, as they have so expressed themselves.

The unjust provisions and technical rules contained in sections 41, 42, 43 and 44 of the pending agreement were no doubt prepared by the attorney representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but on the other hand commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws who have already been identified as stated above and who are entitled to enrollment.

We cannot believe that it was the purpose of those who drew the provisions referred to to have that effect. Therefore we offer in lieu of the sections objected to the pro-

posed amendments set out above, which we think fully protect the Choctaw-Chickasaw Nations from all pretenders who are attempting to be enrolled by fraud, and which at the same time preserves the rights of the Mississippi Choctaws. To this there can be no reasonable objection. Simple justice demands it.

Your memorialist respectfully calls attention to the manifest injustice of requiring the Mississippi Choctaws to prove a technical right under article 14 of the treaty of 1830, or any other article. The Mississippi Choctaws were joint purchasers in 1820 of the lands in Indian Territory, and no article of 1830 should be invoked against their right of common ownership in these western lands.

No such principle was ever thought of until by an accident Congress in the act of 1898, requiring the identification, happened to make reference to the fourteenth article, because in that article was a provision that residence in Mississippi should not deprive Choctaws of their rights. The treaty of 1866 expressly provided that opportunity should be given to non-resident Choctaws to remove to the Choctaw Nation when allotments should take place. This recognized right of the treaty of 1866 has not been abated by any act of the Mississippi Choctaws, and their right cannot be justly ignored by the United States or by the Choctaw-Chickasaw Nations without their consent. The Dawes Commission, in its report of June 30, 1901 (Eighth Annual Report, p. 21), points out how injuriously and unjustly this would operate to the Mississippi Choctaws, and shows that Congress is in duty bound to provide for our full-blood people.

Respectfully submitted.

THE MISSISSIPPI CHOCTAWS,
By C. F. WINTON.
ROBT. L. OWEN, *Counsel.*

HOUSE OF REPRESENTATIVES

58TH CONGRESS, 2d Session.

DOCUMENT No. 614.

MEMORIAL OF MISSISSIPPI CHOCTAW INDIANS

MARCH 15, 1904.—Ordered to be printed.

Mr. STEPHENS presented the following

MEMORIAL OF MISSISSIPPI CHOCTAWS, PRAYING FOR AN EXTENSION OF TIME WITHIN WHICH THEIR RIGHT TO REMOVE TO THE CHOCTAW COUNTRY MAY BE PERMITTED, AND FOR THE PASSAGE OF H. R. 13560.

The Honorable the Senate and House of Representatives:

Your memorialists, full-blood Mississippi Choctaws, residents of Mississippi and of Indian Territory, most humbly pray that those who shall have been identified by the United States Commission to the Five Civilized Tribes may be permitted, at any time prior to the completion of allotments, to file their applications to said Commission for allotments, and that they be not required to conform to any other rules relative to their enrollment or allotment than other citizens of the Choctaw Nation by blood.

Your memorialists respectfully submit that by the act of Congress, approved July 1, 1902, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," it was provided by article 41 that Mississippi Choctaws should, within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and furnish proof of such settlement within one year after the date of

their said identification as Mississippi Choctaws, under penalty of being barred from their rights as Choctaws.

Many of your petitioners do not understand the English language.

At the request of the Choctaw Nation, through its delegate, Congress has heretofore provided that no contracts made by Mississippi Choctaws relative to the lands to be allotted them in the Choctaw-Chickasaw Nation should be valid. This cuts off from the Mississippi Choctaws the opportunity of employing attorneys willing to incur the expense of attending to the various requirements imposed by the statutes.

These requirements were inserted in the act of Congress upon the insistence of the delegates and attorneys of the Choctaw-Chickasaw Nation with a view to depriving your petitioners of their rights, knowing that your petitioners were very much misinformed, and entirely without means, and that many of them did not understand the English language.

Your memorialists are further required, after having resided upon the lands of the Choctaw-Chickasaw Nation for a period of three years, and before the expiration of four years, to furnish proof of the fact of the three years' residence as a further condition of enjoying the right to Choctaw citizenship. Your memorialists humbly pray for an amendment of the present laws as follows, to wit:

Mississippi Choctaws, identified by the United States Commission to the Five Civilized Tribes as full-blood Choctaws, shall have the right, at any time prior to the closing of the allotment office of the Choctaw-Chickasaw country, to make application and have allotted to them, and to their children born of them, prior to the closing of the Choctaw rolls, lands the same as other Choctaws by blood, without being required to comply with any other conditions than

imposed upon other Choctaws, and any condition making a distinction against the said Mississippi Choctaws are hereby repealed.

Your memorialists respectfully submit that ingenious conditions have been inserted in the law, at the request of the attorneys of the Choctaw-Chickasaw Nation, by virtue of which many Mississippi Choctaws would be barred. Said attorneys have a contract with the Choctaw Nation by which said attorneys receive a fee from the Choctaw Nation for each applicant for citizenship defeated by said attorneys, as your memorialists are informed and believe. For example, your memorialists were required within six months after the date of identification to make bona fide settlement within the Choctaw-Chickasaw country, when it was well known that your memorialists were exceedingly poor; when it was well known that your memorialists, under the Mississippi statutes, could not leave their landlords during the crop season; when under that statute it was a misdemeanor for anyone to invite a Mississippi Choctaw to leave his landlord when under contract with or in debt to his landlord; that such removal could only be accomplished by a compromise with the landlord and the payment of the indebtedness of the Mississippi Choctaw before he could be allowed to remove; when by the skillful contrivance of the attorneys of the Choctaw Nation the Mississippi Choctaws were cut off from financial support by being refused the right to contract with regard to the right of their prospective inheritance in the Choctaw country; that under these artful conditions, many of your memorialists were prevented within six months from making bona fide settlement in the Choctaw country; that these attorneys, having a pecuniary interest as aforesaid, have invoked the courts against your memorialists, as will appear by Exhibit A.

The attorneys for the Choctaw Nation have further in-

geniously contrived and invented various other pitfalls for the Mississippi Choctaws, who by incompetency or ignorance or poverty may neglect to make due proof of three years' bona fide residence and prior to the termination of a fixed four-year term.

Your memorialists respectfully insist that these conditions are imposed for the artful purpose of making fees for the attorneys of the Choctaw Nation, to the great harm of your memorialists, and without serving any good cause either to the Choctaw Nation or to the United States.

Your memorialists have heretofore set up their rights in the premises to the Congress of the United States by various petitions, as will appear from the following:

Memorials of December, 1896, and January, 1897, and September, 1897.

House Report No. 3080, Fifty-fourth Congress, second session.

House Bill No. 10372.

Senate Document No. 129, Fifty-fourth Congress, second session.

House Document, No. 274, Fifty-fifth Congress, second session.

Public 162, approved June 28, 1898, Curtis Act.

Emma Nabors *v.* Choctaw Nation, Supreme Court United States, October term, 1898, brief of appellants.

House Document No. 426, Fifty-sixth Congress, first session.

Senate Document No. 263, Fifty-sixth Congress, first session.

Indian appropriation act, approved May 31, 1900. By this act (Public 131, p. 18) it was provided as follows:

Provided, That any Mississippi Choctaw, duly identified as such by the United States Commission to the Five Civilized Tribes, shall have the right, at any time prior to the

approval of the final rolls of the Choctaw and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotments: *Provided further,* That all contracts or agreements looking to the sale or incumbrance in any way of the land to be allotted to said Mississippi Choctaws shall be null and void.

These particulars we pray shall be reenacted as above prayed for.

Your memorialists call attention to the fact that this language prevented us from receiving proper and necessary pecuniary assistance, and the provisions of the Curtis Act (public 162, sec. 19, p. 8), prohibits us pledging any money which might ultimately be due us per capita, the law saying: "The same shall not be liable to the payment of any previously contracted obligations."

Your memorialists were thus cut off from pecuniary assistance when it was well known to the Choctaws that we were too poor to remove ourselves as they themselves so memorialized the Congress of the United States, and made that representation through the Choctaw general council, declaring that we were too poor to emigrate ourselves into the Choctaw Nation (p. 3, H. Rept. 3080, 54th Cong., 2d sess.).

Your memorialists call attention to the various endeavors to deny them the right conceded to them by Congress. The rights of your memorialists are further set up in H. R. 2522, Fifty-sixth Congress, second session; House Document 490, Fifty-sixth Congress, second session, and Senate Document No. 319, Fifty-seventh Congress, first session, and by the Choctaw-Chickasaw agreement (Public, 228), approved July 1, 1902, in sections 41, 42, 43, and 44.

Your memorialists humbly submit that putting the Mis-

sissippi Choctaws, who have been identified, upon the same basis as other Choctaws will serve an important part in disentangling a portion of the complicated conditions brought about in allotting the lands of Indian Territory, and will serve to prevent delay in final allotment.

THE MISSISSIPPI CHOCTAWS,
By CHARLES F. WINTON.
R. L. OWEN, *Counsel.*

To Tams Bixby, Thomas B. Needles, Clifton R. Breckinridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes:

You are hereby notified that the Choctaw and Chickasaw nations or tribes of Indians will, on the 18th day of January, 1904, at 2 o'clock P.M., or at such time as may be fixed by the court, apply to the Hon. Charles W. Raymond, judge of the United States Court for the western district of the Indian Territory, to grant a temporary restraining order against you, as the Commission to the Five Civilized Tribes, as prayed for in the bill in equity, a copy of which is hereto attached and marked "Exhibit A."

CHOCTAW AND CHICKASAW NATIONS OR TRIBES OF INDIANS.
By MANSFIELD, MCMURRAY & CORNISH,
Attorneys.

EXHIBIT A

In the United States Court for the western district of the Indian Territory, sitting at Muskogee. The Choctaw and Chickasaw nations or tribes of Indians, plaintiffs, v. Tams Bixby, Thomas B. Needles, Clifton R. Breckinridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes, defendants.

BILL IN EQUITY

The plaintiffs, the Choctaw and Chickasaw nations or tribes of Indians, for cause of action against the defendants, state:

That under the laws of the United States and the treaties between said nations and the the United States, they are the owners of all the lands embraced within the area known as the Choctaw and Chickasaw nations; that the individual members of said tribes own said lands in fee simple, the character of their holding being fixed by the following provision of Article 1 of the treaty of 1855 between the United States and the Choctaw and Chickasaw nations or tribes of Indians:

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be hold in common; so that each and every member of either tribe shall have an equal undivided interest in the whole; *Provided,* No part thereof shall ever be sold without the consent of both tribes; and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

That under the provisions of the treaty entered into between the United States and said nation or tribes of Indians, on April 23, 1898, commonly known as the Atoka agreement, and the agreement supplementary thereto, entered into on the 21st day of March, 1902, and approved by act of Congress of July 1, 1902, the Commission to the Five Civilized Tribes is authorized and empowered, in strict conformity with said treaties, to allot said lands in severalty among the members of said tribes, as therein provided.

That among other things said supplementary treaty contains the following provision in regard to Mississippi Choctaws:

"Section 41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898, (30 Stats., 495) as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement with the Choctaw-Chick-

asaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full blood Mississippi Choctaw Indians, and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

SEC. 42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment as provided in the Atoka agreement, and he shall hold the lands allotted to

him as provided in this agreement for citizens of the Choctaw and Chickasaw nations.

SEC. 43. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes. Fathers may apply for their minor children, and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound minds may be made by duly appointed guardians or curator, and for aged and infirm persons and prisoners by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

SEC. 44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser.

That the defendants, as the Commission to the Five Civilized Tribes, have no power and authority to receive proof of the settlement of any persons, identified as a Mississippi Choctaw, entitled to allotment as provided in said treaty, after the expiration of six months from the identification of said person as a Mississippi Choctaw, entitled to benefits under the provisions of said supplementary agreement, nor has the Commissioner any power after proof of such settlement to enroll such person and allot to him a share of the lands of said tribes, as provided in said agreement.

The plaintiffs further state that on the 14th day of

February, 1903, the defendants, as the Commission to the Five Civilized Tribes, identified, under the provisions of said agreement, all the persons so applying for identification as Mississippi Choctaws, in the case of King Brandy et al., pending before said Commission, viz.: King Brandy, Jee Baptieste, William Cole, Mary Baptieste and her two minor children (Sam and Louisa Baptieste), and Celestine Brandy.

That the six months within which said persons so identified as Mississippi Choctaws could, under the provisions of said treaty, make bona fide settlement within the Choctaw and Chickasaw country, expired on the 14th day of August, 1903, and that up to and including that date none of said persons removed to and made bona fide settlement within the Choctaw-Chickasaw country,

That notwithstanding this failure to comply with the law, and notwithstanding said defendants, as the Commission to the Five Civilized Tribes have no lawful power and authority to do so, the defendants are threatening, and will, unless restrained, permit said persons to remove to and make settlement in the Choctaw-Chickasaw country and take possession of the lands belonging to these plaintiffs, to the exclusion of bona fide members of said tribes, and are threatening and, unless restrained, will permit said parties to make proof of such settlement to said Commission, and will, unless restrained, enroll said persons as Mississippi Choctaws, and make to them an allotment of lands as provided in said supplementary agreement.

That the plaintiffs, the members of the Choctaw and Chickasaw nations, will thus be deprived of their common property of the approximate value of $40,000, to the great damage of these plaintiffs and in violation of their legal and treaty rights.

Plaintiffs further state that said threatened action by the defendants is unlawful, to the great damage of plaintiffs, and constitutes an injury to them for which they have no adequate legal remedy.

Wherefore, the premises considered, the plaintiffs pray that the defendants be enjoined from taking such threatened action, and that upon final hearing a decree be entered per-

petually enjoining them from taking such action in regard to all of such persons, or in regard to any persons similarly situated.

CHOCTAW AND CHICKASAW NATIONS OR TRIBES OF INDIANS,
BY MANSFIELD, MCMURRAY & CORNISH, *Attorneys.*

I, R. P. Harrison, Clerk of the United States Court of the western district of the Indian Territory, do hereby certify that the attached is a true and correct copy of an order of court made on the 18th day of January, 1904, as the same appears from the original on file in my office.

Witness my hand and the seal of said court at Muskogee in said Territory, this 19th day of January, A. D., 1904.

(Seal) R. P. HARRISON, *Clerk,*
R. A. BAYNE, *Deputy Clerk.*

In the United States Court, in the Indian Territory, western district, sitting at Muskogee. The Choctaw and Chickasaw Nations or Tribes of Indians, plaintiff, vs. Tams Bixby, Thos. B. Needles, Clifton R. Breckinridge, W. E. Stanley as the Commission to the Five Civilized Tribes, defendants.

Now, on this 18th day of January, 1904, come the above-named plaintiffs and defendants, by their respective attorneys, and the application for an injunction, filed in the above-entitled cause, having been presented to, seen, and considered by the court, and the court having heard the evidence introduced in support thereof, and the argument of the counsel, and being fully advised in the premises doth order that the temporary restraining order prayed for in said bill should issue.

Wherefore, it is by the court ordered and adjudged that Tams Bixby, Thomas B. Needles, Clifton B. Breckenridge, and W. E. Stanley, individually, and as the Commission to the Five Civilized Tribes be, and they are hereby, restrained, until the further order of this court, from enrolling King, Brandy, Jow Baptieste, William Cole, Mary

Baptieste, and her two minor children, Sam and Louisa Baptieste, and Celestine Brandy as Mississippi Choctaws, and from making to them an allotment of land as provided in said supplemental agreement, and that the restraining order be in full force and effect from and after the filing with the clerk of this court a bond in the sum of $2,000 to be conditioned as by law required, the sureties on said bond to be approved by the clerk of the court.

This January 18, 1904, at Muskogee, Ind. T.

C. W. RAYMOND, *Judge.*

(Form No. 191)

SUMMONS

UNITED STATES OF AMERICA,

Indian Territory, Western District, ss;

The President of the United States of America, to the United States Marshal for the Indian Territory, western district:

You are commanded to summons Tams Bixby, Thos. B. Needles, Clifton B. Breckenridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes, to answer on the first day of the next October term of the United States Court in the Indian Territory, western district, at Muskogee, being the 3d day of October, A. D., 1904, a complaint filed against them in said court by the Choctaw and Chickasaw nations, or tribes of Indians, and warn them that upon their failure to answer the complaint will be taken for confessed; and you will make due return of the summons on the first day of next October term of said court.

Witness the Hon. C. W. Raymond, judge of said court, and the seal thereof, at Muskogee, Ind. T., this 19th day of January, A. D., 1904.

(Seal)

R. P. HARRISON, *Clerk.*
BY R. A. BAYNE, *Deputy.*

(Indorsed on back as follows): 278-1110. No. 5208. Summons. The Choctaw and Chickasaw Nations vs. Tams Bixby et al. Summons issued the 19th day of January, 1904; returnable October term, 1904. Mansfield, McMurray & Cornish, attorneys for plaintiff.